

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

THE UNITED STATES OF AMERICA] CASE NO. 4:12CR16

VS.] 9 AM, DECEMBER 11, 2012

RENE CORTEZ SALAZAR, ET AL] PLANO, TEXAS

REPORTER'S TRANSCRIPT OF JURY TRIAL

VOLUME 6 OF 7, PAGES 1485 THROUGH 1626

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CONCORDANCE, PAGE 1606

THE HONORABLE RICHARD A. SCHELL, U.S. DISTRICT JUDGE, PRESIDING

PROCEEDINGS REPORTED IN REALTIME USING COMPUTERIZED STENOTYPE,
TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION.

1 [COURT REPORTER'S NOTES 20121211, 9 AM, WEDNESDAY,
2 DECEMBER 11, 2012, PLANO, TEXAS, U.S. DISTRICT JUDGE RICHARD A.
3 SCHELL PRESIDING]

4 APPEARANCES:

5 FOR THE GOVERNMENT: ERNEST GONZALEZ
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6 972-965-1016

08:58AM

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13 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

14 THE COURT: THANK YOU. PLEASE BE SEATED.

15 MR. GONZALEZ, DID YOU HAVE SOMETHING BEFORE WE BRING

16 IN THE JURY?

17 MR. GONZALEZ: NO, I DON'T, YOUR HONOR.

18 THE COURT: OKAY.

19 LET ME TELL ALL OF YOU THAT I RECEIVED ANOTHER NOTE
20 FROM THE JURY. THIS ONE WAS JUST HANDED TO ME. THIS IS FROM
21 NUMBER 2. I'LL READ IT VERBATIM. "JUDGE SCHELL, IF THE TRIAL
22 CONTINUES BEYOND THIS WEEK, I HAVE TWO MEDICAL TESTS SCHEDULED
23 ON MONDAY AND TUESDAY MORNING, DECEMBER 17TH AND DECEMBER 18TH.
24 THANK YOU." AND SHE SIGNS HER NAME, JUROR NUMBER 2.

25 MR. GONZALEZ: YOUR HONOR, WE HAVE TWO MORE WITNESSES.

09:06AM 1 THEY ARE GOING TO BE SHORT WITNESSES.

09:06AM 2 THE COURT: OKAY. I'LL REASSURE HER THAT SHE'LL BE
09:06AM 3 ABLE TO GO TO HER TESTS.

09:07AM 4 IT LOOKS LIKE EVERYONE IS HERE.

09:07AM 5 ALL RIGHT, MR. HOLLIS, GO AHEAD AND BRING IN THE
09:07AM 6 JURY.

09:07AM 7 COURT SECURITY OFFICER: ALL RISE.

09:08AM 8 [OPEN COURT, DEFENDANTS AND JURY PRESENT]

09:08AM 9 THE COURT: ALL RIGHT. TAKE YOUR SEATS.

09:08AM 10 LADIES AND GENTLEMEN, WE'RE READY TO CONTINUE WITH
09:08AM 11 THE GOVERNMENT'S CASE-IN-CHIEF.

09:08AM 12 MR. GONZALEZ, WHO IS YOUR NEXT WITNESS?

09:08AM 13 MR. GONZALEZ: THE GOVERNMENT CALLS MELISSA STEWART.

09:08AM 14 THE COURT: OKAY.

09:08AM 15 MS. STEWART, JUST COME RIGHT DOWN IN FRONT OF THIS
09:08AM 16 LADY RIGHT HERE. WOULD YOU RAISE YOUR RIGHT HAND, PLEASE,
09:08AM 17 MA'AM.

09:08AM 18 DEPUTY COURT CLERK: YOU DO SOLEMNLY SWEAR THAT THE
09:08AM 19 TESTIMONY YOU SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE
09:08AM 20 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP
09:08AM 21 YOU GOD.

09:08AM 22 THE WITNESS: YES, I DO.

09:08AM 23 THE COURT: OKAY. JUST COME AROUND RIGHT OVER HERE.
09:09AM 24 ALL RIGHT, MR. GONZALEZ.

09:09AM 25

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1489

09:09AM 1 **DIRECT EXAMINATION OF MELISSA RENEE STEWART ON BEHALF OF THE**
09:09AM 2 **GOVERNMENT**

09:09AM 3 **MR. GONZALEZ:**

09:09AM 4 **Q. MS. STEWART, IF YOU CAN GET CLOSE TO THAT MIKE, WE CAN**
09:09AM 5 **HEAR YOUR VOICE.**

09:09AM 6 **A. OKAY.**

09:09AM 7 **Q. THANK YOU.**

09:09AM 8 **WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE COURT,**
09:09AM 9 **THE JURY AND THE RECORD.**

09:09AM 10 **A. MELISSA RENEE STEWART.**

09:09AM 11 **Q. AND HOW OLD ARE YOU?**

09:09AM 12 **A. 38.**

09:09AM 13 **Q. WHERE WERE YOU BORN?**

09:09AM 14 **A. CARSON CITY, NEVADA.**

09:09AM 15 **Q. AND WHERE HAVE YOU RESIDED MOST OF YOUR LIFE?**

09:09AM 16 **A. BETWEEN LAS VEGAS, NEVADA, AND SHERMAN, TEXAS.**

09:09AM 17 **Q. ARE YOU MARRIED?**

09:09AM 18 **A. NO, SIR.**

09:09AM 19 **Q. DO YOU HAVE ANY CHILDREN?**

09:09AM 20 **A. YES.**

09:09AM 21 **Q. HOW MANY CHILDREN DO YOU HAVE?**

09:09AM 22 **A. I HAVE ONE DECEASED AND TWO ALIVE.**

09:09AM 23 **Q. AND WHAT ARE THEIR AGES?**

09:09AM 24 **A. 13 AND 14 RIGHT NOW.**

09:09AM 25 **Q. OKAY.**

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1490

09:09AM 1 AND WHAT DO YOU DO FOR A LIVING?

09:09AM 2 A. I WORK AT A VIDEO STORE.

09:09AM 3 Q. HOW LONG HAVE YOU BEEN WORKING THERE?

09:09AM 4 THE COURT: WOULD YOU SPEAK A LITTLE LOUDER?

09:09AM 5 THE WITNESS: I'M SORRY.

09:09AM 6 I WORK AT A VIDEO STORE. I'VE BEEN THERE FOR A YEAR
09:09AM 7 AND A HALF NOW.

09:09AM 8 MR. GONZALEZ:

09:09AM 9 Q. AND IS THAT IN DENISON, TEXAS?

09:09AM 10 A. YES, SIR.

09:09AM 11 Q. WHAT'S THE HIGHEST LEVEL OF EDUCATION THAT YOU HAVE
09:10AM 12 ATTAINED IN YOUR LIFE?

09:10AM 13 A. TENTH GRADE.

09:10AM 14 Q. OKAY. AND DID YOU EVER RECEIVE YOUR GED?

09:10AM 15 A. NO, SIR.

09:10AM 16 Q. PRESENTLY, YOU HAVE A CASE PENDING BEFORE THIS COURT,
09:10AM 17 IS THAT CORRECT?

09:10AM 18 A. YES, SIR.

09:10AM 19 Q. WHAT ARE THE CHARGES THAT WERE BROUGHT AGAINST YOU IN
09:10AM 20 THIS COURT?

09:10AM 21 A. CONSPIRACY TO SELL METHAMPHETAMINES.

09:10AM 22 Q. OKAY. AND WHAT IS THE STATUS OF YOUR CASE? HAVE YOU
09:10AM 23 PLED GUILTY TO THAT OFFENSE?

09:10AM 24 A. YES, SIR.

09:10AM 25 Q. HAVE YOU BEEN SENTENCED YET?

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1491

09:10AM 1 A. NO.

09:10AM 2 Q. NOW, PRIOR TO PLEADING GUILTY TO THIS OFFENSE
09:10AM 3 OF CONSPIRACY TO POSSESS WITH THE INTENT TO DISTRIBUTE
09:10AM 4 METHAMPHETAMINE, HAD YOU BEEN CONVICTED OF ANY OTHER
09:10AM 5 PRIOR FELONY OFFENSES?

09:10AM 6 A. NO, SIR.

09:10AM 7 Q. NOW, WHEN EXACTLY WAS IT THAT YOU BECAME INVOLVED IN
09:10AM 8 THE DISTRIBUTION OF METHAMPHETAMINE?

09:10AM 9 A. I STARTED IN FEBRUARY OF 2011.

09:10AM 10 Q. AND WHO WAS YOUR SUPPLIER IN FEBRUARY OF 2011?

09:10AM 11 A. I WENT TO A FRIEND OF MINE NAMED TERRELL.

09:10AM 12 Q. AND WHAT QUANTITIES WERE YOU DISTRIBUTING BACK IN
09:10AM 13 FEBRUARY OF 2011?

09:10AM 14 A. AT FIRST, I STARTED GETTING A GRAM ABOUT EVERY DAY,
09:11AM 15 SOMETIMES EVERY OTHER DAY.

09:11AM 16 Q. AND WERE YOU DISTRIBUTING THAT GRAM THERE IN THE
09:11AM 17 DENISON AREA?

09:11AM 18 A. YES.

09:11AM 19 Q. AT SOME POINT DID YOU ACQUIRE ANOTHER SUPPLIER?

09:11AM 20 A. I GOT IN TROUBLE IN APRIL AND I QUIT UNTIL JUNE.
09:11AM 21 AND THAT'S WHEN I STARTED DOING--WORKING WITH RENE.

09:11AM 22 Q. AND WHEN YOU SAY "RENE," IS THAT RENE SALAZAR?

09:11AM 23 A. YES, SIR.

09:11AM 24 Q. DO YOU SEE HIM IN THE COURTROOM TODAY?

09:11AM 25 A. YES, SIR.

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

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09:11AM 1 Q. OKAY. IF THIS IS PERSON NUMBER 1, PERSON NUMBER 2,
09:11AM 2 PERSON NUMBER 3, PERSON NUMBER 4, PERSON NUMBER 5, PERSON
09:11AM 3 NUMBER 6, WHICH PERSON WOULD HE BE?

09:11AM 4 A. PERSON NUMBER 2.

09:11AM 5 MR. GONZALEZ: YOUR HONOR, MAY THE RECORD REFLECT
09:11AM 6 THAT THIS WITNESS HAS IDENTIFIED THE DEFENDANT RENE SALAZAR?

09:11AM 7 THE COURT: YES.

09:11AM 8 MR. GONZALEZ:

09:11AM 9 Q. NOW, WHEN EXACTLY DID YOU START GOING TO HIM FOR
09:11AM 10 METHAMPHETAMINE?

09:11AM 11 A. IT WAS IN JUNE.

09:11AM 12 Q. OKAY. OF WHAT YEAR?

09:12AM 13 A. 2011.

09:12AM 14 Q. AND HOW WAS IT THAT YOU MET OR KNEW RENE SALAZAR?

09:12AM 15 A. HE WAS WITH MY SISTER FOR A WHILE.

09:12AM 16 Q. BUT YOU KNEW HIM BEFORE THEN. CORRECT?

09:12AM 17 A. BEFORE HE GOT WITH MY SISTER?

09:12AM 18 Q. WELL, BEFORE YOU STARTED DEALING WITH HIM.

09:12AM 19 A. OH, YEAH, YEAH, YEAH.

09:12AM 20 Q. BECAUSE HE WAS WITH YOUR SISTER?

09:12AM 21 A. YES.

09:12AM 22 Q. WHAT WAS YOUR SISTER'S NAME?

09:12AM 23 A. SHERRY WEST.

09:12AM 24 Q. AND WHEN YOU FIRST STARTED WITH RENE SALAZAR, WHAT
09:12AM 25 QUANTITIES WERE YOU RECEIVING FROM HIM?

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1493

09:12AM 1 A. WHEN I FIRST STARTED, I WAS GETTING, LIKE, A QUARTER-
09:12AM 2 OUNCE A DAY MAYBE.

09:12AM 3 Q. AND DID THAT AMOUNT INCREASE OVER TIME?

09:12AM 4 A. YES.

09:12AM 5 Q. WHAT DID IT INCREASE TO?

09:12AM 6 A. ABOUT AN OUNCE.

09:12AM 7 Q. AND HOW QUICKLY DID IT INCREASE TO AN OUNCE?

09:12AM 8 A. ALL I WORKED WITH RENE WAS FROM JUNE TO AUGUST, UNTIL
09:12AM 9 HE WAS INCARCERATED.

09:12AM 10 Q. SO SOMETIME BETWEEN JUNE AND AUGUST YOU WENT FROM A
09:12AM 11 QUARTER TO AN OUNCE?

09:12AM 12 A. YES, SIR.

09:12AM 13 Q. NOW, AT THE TIME THAT YOU FIRST STARTED GOING TO HIM
09:13AM 14 TO HAVE HIM SUPPLY YOU, WHERE WAS HE LIVING?

09:13AM 15 A. I THINK THAT HE WAS IN THE APARTMENT BEHIND HIS SISTER'S
09:13AM 16 HOUSE.

09:13AM 17 Q. APARTMENT BEHIND WHO?

09:13AM 18 A. HIS SISTER'S HOUSE.

09:13AM 19 Q. OKAY.

09:13AM 20 AND DO YOU RECALL WHO HE WAS LIVING WITH AT THAT
09:13AM 21 TIME?

09:13AM 22 A. I THINK HIM AND MY SISTER WERE ON AND OFF AT THAT TIME.
09:13AM 23 I'M NOT REAL SURE.

09:13AM 24 Q. OKAY.

09:13AM 25 A. THEY WERE ALWAYS ON AND OFF.

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1494

09:13AM 1 Q. AND WAS HE FRONTING YOU THE DRUGS?

09:13AM 2 A. YES.

09:13AM 3 Q. SO YOU WOULD SELL THE DRUGS AND THEN BRING HIM BACK THE
09:13AM 4 AMOUNTS?

09:13AM 5 A. YES.

09:13AM 6 Q. HOW MUCH WERE YOU BUYING A QUARTER-OUNCE FOR?

09:13AM 7 A. 200.

09:13AM 8 Q. OKAY. AND HOW MUCH WERE YOU SELLING IT FOR?

09:13AM 9 A. SOMETIMES I WOULD MAKE 250, SOMETIMES I WOULD MAKE 300.
09:13AM 10 IT VARIED.

09:13AM 11 Q. SO, BASICALLY, YOU WENT FROM A QUARTER-OUNCE TO MAYBE A
09:13AM 12 HALF-OUNCE?

09:13AM 13 A. YES.

09:13AM 14 Q. AND HOW MUCH WERE YOU BUYING A HALF-OUNCE FOR?

09:13AM 15 A. 400.

09:13AM 16 Q. AND HOW MUCH WERE YOU SELLING IT FOR?

09:14AM 17 A. I WOULD MAKE A HUNDRED DOLLARS OFF THAT.

09:14AM 18 Q. AND THEN FROM A HALF-OUNCE TO AN OUNCE?

09:14AM 19 A. YES.

09:14AM 20 Q. DO YOU RECALL HOW MUCH YOU WERE PAYING FOR AN OUNCE?

09:14AM 21 A. I THINK 14, 12. I DON'T REMEMBER, HONESTLY.

09:14AM 22 Q. OKAY.

09:14AM 23 AND WHAT WAS THE LARGEST AMOUNT OF METHAMPHETAMINE
09:14AM 24 THAT YOU RECEIVED DURING THAT TIME PERIOD FROM RENE SALAZAR AT
09:14AM 25 ONE TIME?

1495

09:14AM 1 A. AT ONE TIME? AN OUNCE.

09:14AM 2 Q. AND WHEN YOU WOULD RECEIVE IT AT HIS HOUSE, HE WOULD
09:14AM 3 FRONT IT TO YOU. WOULD YOU ALSO BRING BACK THE MONEY TO HIM,
09:14AM 4 TO RENE SALAZAR?

09:14AM 5 A. I DIDN'T ALWAYS GET IT FROM HIM, EITHER, OR BRING THE
09:14AM 6 MONEY TO HIM. 80 PERCENT OF THE TIME I WAS GOING THROUGH
09:14AM 7 CHARLIE.

09:14AM 8 Q. AND WHO IS CHARLIE?

09:14AM 9 A. HE WAS HIS NEIGHBOR.

09:14AM 10 MR. GONZALEZ: CAN WE HAVE GOVERNMENT'S EXHIBIT 123,
09:14AM 11 PLEASE?

09:14AM 12 Q. DO YOU RECOGNIZE WHO IS DEPICTED ON THE SCREEN THERE?

09:14AM 13 A. YES, SIR.

09:14AM 14 Q. IS THAT CHARLIE, THE CHARLIE YOU ARE REFERRING TO?

09:14AM 15 A. YES, SIR.

09:15AM 16 Q. OKAY. AND YOU SAY HE WAS RENE SALAZAR'S NEIGHBOR.
09:15AM 17 CORRECT?

09:15AM 18 A. [MOVING HEAD UP AND DOWN]

09:15AM 19 Q. AND WAS HE RENE SALAZAR'S NEIGHBOR WHEN HE WAS LIVING
09:15AM 20 IN THE APARTMENT BEHIND HIS SISTER'S HOUSE?

09:15AM 21 A. NO, IT WAS ON DAY STREET.

09:15AM 22 Q. ON DAY STREET?

09:15AM 23 A. YES.

09:15AM 24 Q. SO DID RENE SALAZAR MOVE FROM THE APARTMENT BEHIND HIS
09:15AM 25 SISTER'S HOUSE OVER TO DAY STREET?

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1496

09:15AM 1 A. I THINK HE WAS IN THE PROCESS IN JUNE OF MOVING TO DAY
09:15AM 2 STREET. I'M NOT EXACTLY SURE WHEN HE MOVED TO DAY STREET,
09:15AM 3 BUT I THINK HE WAS IN THE PROCESS OF DOING ALL THAT ABOUT
09:15AM 4 THAT TIME.

09:15AM 5 Q. BUT EVENTUALLY HE DID MOVE OVER TO DAY STREET?

09:15AM 6 A. YES.

09:15AM 7 Q. AND CHARLIE QUIROLO WAS HIS NEIGHBOR?

09:15AM 8 A. YES.

09:15AM 9 Q. AND DO YOU RECALL WHO WAS LIVING WITH HIM ON DAY STREET?

09:15AM 10 A. A GIRL NAMED ANDREA.

09:15AM 11 Q. SO THAT WAS HIS GIRLFRIEND AT THE TIME HE WAS LIVING ON
09:15AM 12 DAY STREET?

09:15AM 13 A. YES.

09:15AM 14 Q. SO HE WAS NO LONGER WITH YOUR SISTER?

09:15AM 15 A. NO.

09:15AM 16 Q. AND WERE YOU PICKING UP THE SAME QUANTITIES FROM
09:15AM 17 CHARLIE QUIROLO?

09:15AM 18 A. YES. UNTIL AFTER RENE WENT TO JAIL.

09:15AM 19 Q. OKAY. BUT LET'S STICK WITH THAT TIME PERIOD. WHEN YOU
09:15AM 20 NEEDED DRUGS, WHO WOULD YOU CALL?

09:15AM 21 A. I WOULD CALL RENE.

09:16AM 22 Q. AND WOULD HE THEN SEND YOU OVER TO CHARLIE TO PICK IT
09:16AM 23 UP?

09:16AM 24 A. YES.

09:16AM 25 Q. AND THEN AFTER YOU SOLD THE DRUGS, WOULD YOU EITHER

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1497

09:16AM 1 BRING THE MONEY DIRECTLY TO RENE OR TO CHARLIE, OR BOTH?

09:16AM 2 A. BOTH.

09:16AM 3 Q. OKAY. BUT IN ORDER TO PLACE AN ORDER, YOU WENT THROUGH
09:16AM 4 RENE?

09:16AM 5 A. YES.

09:16AM 6 Q. OKAY.

09:16AM 7 AT SOME POINT DURING YOUR DEALINGS WITH RENE
09:16AM 8 SALAZAR, DID YOU FIND OUT THAT HE HAD A PARTNER IN THE DRUG
09:16AM 9 BUSINESS?

09:16AM 10 A. YEAH.

09:16AM 11 Q. AND WHO WAS THAT?

09:16AM 12 A. KENNETH HOUSE.

09:16AM 13 Q. AND DID YOU KNOW KENNETH HOUSE BEFORE THAT DAY?

09:16AM 14 A. YES. I'VE KNOWN HIM FOREVER.

09:16AM 15 Q. OKAY. AND DO YOU KNOW WHAT HIS NICKNAME IS? WHAT DOES
09:16AM 16 HE GO BY?

09:16AM 17 A. NO, I DIDN'T KNOW UNTIL AFTER HE WAS WORKING WITH RENE.

09:16AM 18 Q. WHAT DID YOU FIND OUT TO BE HIS NICKNAME?

09:16AM 19 A. FLIP.

09:16AM 20 Q. BUT YOU HAD ALL YOUR DEALINGS WITH RENE SALAZAR.

09:17AM 21 CORRECT?

09:17AM 22 A. YES.

09:17AM 23 Q. NOW, DURING THE TIME PERIOD THAT YOU ARE DEALING WITH
09:17AM 24 RENE SALAZAR, ARE YOU INTRODUCED TO AN INDIVIDUAL BY THE NAME
09:17AM 25 OF MIKE CAMACHO?

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1498

09:17AM 1 A. YES.

09:17AM 2 Q. WHO INTRODUCES YOU TO MIKE CAMACHO?

09:17AM 3 A. RENE DID.

09:17AM 4 Q. OKAY. AND WHY WAS THAT DONE? WHY DID HE INTRODUCE YOU
09:17AM 5 TO MIKE CAMACHO?

09:17AM 6 A. HE WAS GOING--RENE WAS FIXING TO GO TO PRISON.

09:17AM 7 Q. AND WHY DID HE WANT TO INTRODUCE YOU TO MIKE CAMACHO
09:17AM 8 IF HE WAS GOING TO PRISON?

09:17AM 9 A. I'M NOT REAL SURE WHY HE WANTED ME TO. I'M THINKING SO
09:17AM 10 I COULD GO THROUGH MIKE.

09:17AM 11 Q. DID HE REPRESENT THAT CAMACHO WAS HIS SOURCE OF SUPPLY,
09:17AM 12 THE PERSON THAT WAS SUPPLYING HIM?

09:17AM 13 A. NO. HE JUST SAID THAT HE WANTED ME TO MEET SOMEBODY.

09:17AM 14 Q. NOW, ARE YOU FAMILIAR WITH AN INDIVIDUAL BY THE NAME
09:17AM 15 OF BOBBY JAMES?

09:17AM 16 A. YES.

09:17AM 17 Q. AND WHAT WAS BOBBY JAMES' ROLE IN ALL OF THIS?

09:17AM 18 A. TOWARDS THE END OF ME SELLING METHAMPHETAMINES,
09:18AM 19 HE WAS ONE OF THE ONES THAT WOULD BRING IT TO ME.

09:18AM 20 Q. OKAY. SO WAS HE WORKING FOR RENE SALAZAR?

09:18AM 21 A. I'M NOT--I DON'T KNOW.

09:18AM 22 Q. OKAY.

09:18AM 23 NOW, DURING YOUR TIME PERIOD THAT YOU ARE DEALING
09:18AM 24 WITH RENE AND YOU KNOW THAT FLIP, OR KENNETH HOUSE, WAS HIS
09:18AM 25 PARTNER, DID YOU EVER HEAR RENE MENTION WHO WAS GOING DOWN

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1499

09:18AM 1 TO PICK UP THE METHAMPHETAMINE?

09:18AM 2 A. HE WOULD SAY ONCE IN A WHILE, "IT'LL BE HERE IN A
09:18AM 3 LITTLE WHILE. FLIP WENT TO GO GET IT."

09:18AM 4 Q. SO THAT INDICATED TO YOU THAT KENNETH HOUSE WAS PICKING
09:18AM 5 IT UP?

09:18AM 6 A. YEAH.

09:18AM 7 Q. NOW, WAS THERE A POINT WHERE YOU WERE DEALING WITH
09:18AM 8 CHARLIE AND HE STARTED MESSING UP THE DELIVERY OR THE
09:18AM 9 DISTRIBUTION?

09:18AM 10 A. HE WAS MESSING UP THE MONEY AND THE METHAMPHETAMINES.
09:18AM 11 SO CAMACHO TOOK HIM OFF OF IT.

09:18AM 12 Q. OKAY. SO YOU WERE NO LONGER DEALING WITH CHARLIE?

09:18AM 13 A. YEAH.

09:18AM 14 Q. WHO WERE YOU DEALING WITH?

09:18AM 15 A. AT THAT POINT, CAMACHO CALLED ME AND ASKED ME IF I WAS
09:18AM 16 COMFORTABLE GOING THROUGH ANDREA OR BOBBY JAMES.

09:19AM 17 Q. OKAY. AND DID YOU DO THAT?

09:19AM 18 A. YES, SIR.

09:19AM 19 Q. SO YOU STARTED GOING THROUGH THEM?

09:19AM 20 A. YES. THEY WOULD BRING IT TO ME.

09:19AM 21 Q. SO, BASICALLY, YOU AND BOBBY JAMES AND ANDREA WERE
09:19AM 22 PUTTING YOUR MONEY TOGETHER?

09:19AM 23 A. NO. I ALWAYS GOT IT FRONTED.

09:19AM 24 Q. OKAY. BUT WOULD YOU SEND YOUR MONEY BACK THROUGH THEM?

09:19AM 25 A. NO, SIR.

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1500

09:19AM 1 Q. YOU PAID CAMACHO DIRECTLY?

09:19AM 2 A. YES.

09:19AM 3 Q. OKAY.

09:19AM 4 NOW, YOU SAID YOU STARTED IN JUNE OF 2011, IS THAT
09:19AM 5 CORRECT?

09:19AM 6 A. I STARTED IN FEBRUARY 2011, BUT JUNE 2011 I STARTED
09:19AM 7 WORKING WITH RENE.

09:19AM 8 Q. OKAY. AND UNTIL WHAT TIME DID YOU DISTRIBUTE
09:19AM 9 METHAMPHETAMINE?

09:19AM 10 A. I QUIT AT THE BEGINNING--I QUIT RIGHT AROUND THE
09:19AM 11 BEGINNING OF NOVEMBER/THE END OF OCTOBER OF 2011.

09:19AM 12 Q. NOW, CONSIDERING THAT TIME PERIOD OF JUNE THROUGH
09:20AM 13 NOVEMBER, IF YOU HAD TO ESTIMATE THE AMOUNT OF METHAMPHETAMINE
09:20AM 14 THAT YOU RECEIVED FROM RENE SALAZAR, WHAT WOULD THAT AMOUNT BE?

09:20AM 15 A. FROM RENE?

09:20AM 16 Q. YES.

09:20AM 17 A. IT WOULD BE ABOUT SIX, EIGHT OUNCES. SIX TO EIGHT
09:20AM 18 OUNCES.

09:20AM 19 Q. OKAY.

09:20AM 20 NOW, FROM DURING THE TIME PERIOD THAT YOU WERE
09:20AM 21 DEALING WITH CHARLIE, WHAT WOULD THAT AMOUNT BE?

09:20AM 22 A. ABOUT THREE TO FOUR.

09:20AM 23 Q. AND DURING THE TIME THAT YOU WERE DEALING WITH ANDREA,
09:20AM 24 BOBBY JAMES AND MIKE CAMACHO, WHAT WOULD THAT AMOUNT BE?

09:20AM 25 A. ABOUT 16 TO 18.

1501

09:20AM 1 Q. SO ANYWHERE FROM 25 TO 30 OUNCES DURING THAT TIME
09:20AM 2 PERIOD?

09:20AM 3 A. ROUNDABOUT.

09:20AM 4 Q. AND YOU INDICATED THAT IT WAS JUST ABOUT EVERY OTHER
09:20AM 5 DAY THAT YOU WERE PICKING UP AND DISTRIBUTING?

09:20AM 6 A. YES. UNTIL I GOT INTO BIGGER QUANTITIES. AND THEN
09:20AM 7 IT WAS--I WAS PICKING UP LESS. I WAS PICKING UP, LIKE, ONCE
09:21AM 8 A WEEK.

09:21AM 9 Q. AND THAT'S WHEN YOU GOT UP TO AN OUNCE?

09:21AM 10 A. UP TO TWO OUNCES.

09:21AM 11 Q. SO TWO OUNCES WAS THE LARGEST QUANTITY THAT YOU GOT UP
09:21AM 12 TO?

09:21AM 13 A. YES.

09:21AM 14 Q. AND THAT'S TWO OUNCES PER WEEK?

09:21AM 15 A. YES.

09:21AM 16 Q. OKAY.

09:21AM 17 NOW, AFTER YOUR ARREST ON THE FEDERAL CHARGES, YOU
09:21AM 18 AGREED TO COOPERATE. CORRECT?

09:21AM 19 A. YES.

09:21AM 20 Q. AND YOU STARTED COOPERATING AND PROVIDING INFORMATION.
09:21AM 21 CORRECT?

09:21AM 22 A. YES.

09:21AM 23 Q. AND EVEN FURTHER THAN THAT, YOU AGREED TO WORK AS A
09:21AM 24 CONFIDENTIAL INFORMANT FOR THE AGENTS?

09:21AM 25 A. YES.

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1502

09:21AM 1 Q. AND YOU WORKED AS A CONFIDENTIAL INFORMANT FOR THE
09:21AM 2 AGENTS?

09:21AM 3 A. YES.

09:21AM 4 Q. NOW, HAVE I, MS. BATSON OR ANY OF THE AGENTS PROMISED
09:21AM 5 YOU ANYTHING SPECIFIC IN REGARDS TO YOUR COOPERATION AS A
09:21AM 6 CONFIDENTIAL INFORMANT?

09:21AM 7 A. NO.

09:21AM 8 Q. HAVE I TOLD YOU THAT BECAUSE OF BEING A CONFIDENTIAL
09:21AM 9 INFORMANT, YOU SHOULD EXPECT TO RECEIVE A CERTAIN SENTENCE?

09:21AM 10 A. NO.

09:21AM 11 Q. HAVE I TOLD YOU BECAUSE OF YOUR COOPERATION AS A
09:21AM 12 CONFIDENTIAL INFORMANT, YOU SHOULD EXPECT THE JUDGE TO GIVE
09:21AM 13 YOU A CERTAIN SENTENCE?

09:22AM 14 A. NO, SIR.

09:22AM 15 Q. HAVE ANY GUARANTEES OR PROMISES BEEN MADE TO YOU
09:22AM 16 BECAUSE YOU ARE WORKING AS A CONFIDENTIAL INFORMANT?

09:22AM 17 A. NO, SIR.

09:22AM 18 Q. ALL RIGHT.

09:22AM 19 NOW, YOU INDICATED THAT YOU PLED GUILTY TO THIS
09:22AM 20 OFFENSE, IS THAT CORRECT?

09:22AM 21 A. YES.

09:22AM 22 Q. AND WAS THAT BY WAY OF A PLEA AGREEMENT? DID YOU HAVE
09:22AM 23 A PLEA AGREEMENT IN PLACE?

09:22AM 24 A. YEAH.

09:22AM 25 Q. OKAY. CAN YOU TURN TO TAB 73 IN THAT NOTEBOOK IN FRONT

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1503

09:22AM 1 OF YOU?

09:22AM 2 A. 73?

09:22AM 3 Q. YES. I'M SORRY. I MISDIRECTED YOU. CAN YOU TURN TO
09:22AM 4 TAB 100? SORRY ABOUT THAT.

09:22AM 5 A. THAT'S OKAY.

09:23AM 6 Q. DO YOU RECOGNIZE THAT DOCUMENT?

09:23AM 7 A. YES, SIR.

09:23AM 8 Q. WHAT DO YOU RECOGNIZE IT TO BE?

09:23AM 9 A. MY PLEA AGREEMENT.

09:23AM 10 Q. OKAY. CAN YOU REVIEW THAT PLEA AGREEMENT, NOT
09:23AM 11 NECESSARILY READING IT, BUT GOING THROUGH IT AND MAKING SURE
09:23AM 12 THAT IT HASN'T BEEN CHANGED IN ANY WAY SINCE YOU LAST SAW IT.

09:23AM 13 A. YES, SIR. YES, IT'S THE ONE I READ AND SIGNED.

09:24AM 14 Q. HAS IT BEEN CHANGED OR ALTERED IN ANY WAY SINCE YOU SAW
09:24AM 15 IT LAST?

09:24AM 16 A. I DON'T THINK SO.

09:24AM 17 MR. GONZALEZ: YOUR HONOR, AT THIS TIME WE WOULD
09:24AM 18 OFFER GOVERNMENT'S EXHIBIT 100 INTO EVIDENCE.

09:24AM 19 MR. WHALEN: NO OBJECTION.

09:24AM 20 MR. KEMP: NO OBJECTION.

09:24AM 21 MR. PETRAZIO: NO OBJECTION.

09:24AM 22 THE COURT: GOVERNMENT'S EXHIBIT 100 IS ADMITTED.

09:24AM 23 MR. GONZALEZ: MAY WE PUBLISH?

09:24AM 24 THE COURT: YES.

09:24AM 25 MR. GONZALEZ:

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1504

09:24AM 1 Q. NOW, MS. STEWART, ON THE SCREEN THERE IS "UNITED STATES
09:24AM 2 VERSUS MELISSA RENEE STEWART PLEA AGREEMENT." IS THAT THE
09:24AM 3 SAME DOCUMENT THAT YOU ARE LOOKING AT ON THE WITNESS STAND?

09:24AM 4 A. YES, SIR.

09:24AM 5 Q. IT'S THE SAME DOCUMENT THAT YOU INDICATED HAD NOT BEEN
09:24AM 6 CHANGED SINCE YOU LAST SAW IT. CORRECT?

09:24AM 7 A. YES, SIR.

09:24AM 8 Q. ALL RIGHT.

09:24AM 9 NOW, IN PARAGRAPH 2, IT STATES THAT YOU AGREE TO
09:24AM 10 WAIVE CERTAIN RIGHTS AND AGREE TO PLEAD GUILTY TO COUNT 1 OF
09:25AM 11 THE SECOND SUPERSEDING INDICTMENT, WHICH CHARGES A VIOLATION
09:25AM 12 OF 21 USC 846, CONSPIRACY TO POSSESS WITH THE INTENT TO
09:25AM 13 MANUFACTURE AND DISTRIBUTE METHAMPHETAMINE. IS THAT WHAT
09:25AM 14 YOU PLED GUILTY TO?

09:25AM 15 A. YES.

09:25AM 16 Q. AND THAT'S WHAT YOU TOOK RESPONSIBILITY FOR?

09:25AM 17 A. YES.

09:25AM 18 Q. OKAY.

09:25AM 19 NOW, IN PARAGRAPH 5(A), YOU AGREED IN YOUR PLEA
09:25AM 20 AGREEMENT THAT THE BASE OFFENSE LEVEL UNDER UNITED STATES
09:25AM 21 SENTENCING GUIDELINE SECTION 2D1.1 IS 32 BASED ON THE
09:25AM 22 POSSESSION WITH INTENT TO DISTRIBUTE AT LEAST 500 GRAMS BUT
09:25AM 23 LESS THAN 1.5 KILOGRAMS OF A MIXTURE OR SUBSTANCE CONTAINING
09:25AM 24 A DETECTABLE AMOUNT OF METHAMPHETAMINE. AND IS THAT WHAT YOU
09:25AM 25 AGREED TO?

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1505

09:25AM 1 A. YES, SIR.

09:25AM 2 Q. AND THAT'S WHAT YOU PLED GUILTY TO?

09:25AM 3 A. YES, SIR.

09:25AM 4 Q. ALL RIGHT.

09:25AM 5 NOW, IN PARAGRAPH 7, IT STATES THAT "THE DEFENDANT
09:25AM 6 SHALL GIVE TRUTHFUL AND COMPLETE INFORMATION AND/OR TESTIMONY
09:26AM 7 CONCERNING THE DEFENDANT'S PARTICIPATION IN THE OFFENSE OF
09:26AM 8 CONVICTION AND KNOWLEDGE OF OTHER CRIMINAL ACTIVITIES."
09:26AM 9 DID YOU UNDERSTAND THAT SECTION?

09:26AM 10 A. YES, SIR.

09:26AM 11 Q. AND, IN FACT, HAVE YOU ALREADY DONE THAT?

09:26AM 12 A. YES, SIR.

09:26AM 13 Q. AND TODAY YOU ARE HERE TESTIFYING BECAUSE YOU
09:26AM 14 UNDERSTOOD THAT, IF CALLED UPON, YOU HAD TO GIVE TRUTHFUL
09:26AM 15 AND COMPLETE INFORMATION?

09:26AM 16 A. YES, SIR.

09:26AM 17 Q. AND YOU'VE ALSO TALKED ABOUT OTHER CRIMINAL ACTIVITIES
09:26AM 18 AND ARE WORKING AS A CONFIDENTIAL INFORMANT IN REGARDS TO THAT.
09:26AM 19 CORRECT?

09:26AM 20 A. YES, SIR.

09:26AM 21 Q. OKAY.

09:26AM 22 NOW, IT GOES ON TO SAY, "THE DEFENDANT SHALL NOT
09:26AM 23 TAKE ANY ACTIONS THAT WOULD OBSTRUCT THE GOVERNMENT'S
09:26AM 24 INVESTIGATION INTO THE OFFENSE OF CONVICTION OR THE OTHER
09:26AM 25 CRIMINAL ACTIVITIES OF WHICH THE DEFENDANT HAS KNOWLEDGE."

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1506

09:26AM 1 DID YOU UNDERSTAND THAT?

09:26AM 2 A. YES, SIR.

09:26AM 3 Q. AND THEN IT GOES ON TO SAY THAT "THE DEFENDANT
09:26AM 4 UNDERSTANDS THAT INTENTIONALLY PROVIDING FALSE INFORMATION OR
09:26AM 5 TESTIMONY TO IMPLICATE AN INNOCENT PERSON IN THE COMMISSION OF
09:26AM 6 A CRIME OR TO PROTECT A GUILTY PERSON AND/OR EXAGGERATING THE
09:26AM 7 INVOLVEMENT OF ANY PERSON IN A CRIME IN ORDER TO APPEAR
09:26AM 8 COOPERATIVE WILL BE A MATERIAL VIOLATION OF THIS AGREEMENT."

09:26AM 9 DID YOU UNDERSTAND THAT?

09:26AM 10 A. YES.

09:26AM 11 Q. DID YOU UNDERSTAND THAT YOU COULDN'T EXAGGERATE AND
09:26AM 12 THAT YOU COULDN'T PROTECT ANYBODY?

09:27AM 13 A. YES.

09:27AM 14 Q. AND THAT YOU HAD TO BE COMPLETELY TRUTHFUL?

09:27AM 15 A. YES.

09:27AM 16 Q. OKAY.

09:27AM 17 NOW, TOWARDS THE BOTTOM, WHERE IT STARTS WITH THE
09:27AM 18 WORD "FAILURE," IT SAYS, "FAILURE TO COMPLY WITH THIS SECTION
09:27AM 19 CAN RESULT IN PROSECUTION FOR THE CHARGES IDENTIFIED IN
09:27AM 20 PARAGRAPH 2 ABOVE AND FOR ANY OTHER FEDERAL OFFENSES THE
09:27AM 21 DEFENDANT MAY HAVE COMMITTED." DID YOU UNDERSTAND THAT?

09:27AM 22 A. YES.

09:27AM 23 Q. THAT IF YOU TOOK THE STAND AND LIED, YOU COULD BE
09:27AM 24 CHARGED WITH PERJURY?

09:27AM 25 A. YES.

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1507

09:27AM 1 Q. AND THAT THE TIME FOR THE PERJURY WOULD BE STACKED ON
09:27AM 2 THE DRUG OFFENSE?

09:27AM 3 A. YES.

09:27AM 4 Q. AND THAT YOU COULD ALSO BE CHARGED FOR OTHER FEDERAL
09:27AM 5 VIOLATIONS, SUCH AS OBSTRUCTION OF JUSTICE?

09:27AM 6 A. YES.

09:27AM 7 Q. OKAY. AND YOU UNDERSTOOD THAT?

09:27AM 8 A. YES, SIR.

09:27AM 9 Q. THEN, FINALLY, IN THAT SECTION IT TALKS ABOUT "UPON
09:27AM 10 SUCH FAILURE, THE GOVERNMENT MAY USE ANY OF THE DEFENDANT'S
09:27AM 11 STATEMENTS OR LEADS DERIVED THEREFROM AGAINST THE DEFENDANT
09:27AM 12 IN ANY PROCEEDING." SO DID YOU UNDERSTAND THAT YOUR OWN WORDS
09:27AM 13 COULD BE USED AGAINST YOU IF YOU FAILED TO COMPLY WITH THIS
09:27AM 14 PLEA AGREEMENT?

09:27AM 15 A. YES.

09:27AM 16 Q. OR IF YOU COMMITTED PERJURY OR IF YOU OBSTRUCTED
09:28AM 17 JUSTICE, WE COULD USE WHAT YOU'VE TESTIFIED TO TODAY AND ANY
09:28AM 18 STATEMENTS THAT YOU HAVE PROVIDED IN YOUR COOPERATION WITH
09:28AM 19 AGENTS?

09:28AM 20 A. YES.

09:28AM 21 Q. AND YOU UNDERSTOOD THAT?

09:28AM 22 A. YES, SIR.

09:28AM 23 Q. THE NEXT SECTION, PARAGRAPH 8, IS ENTITLED "SUBSTANTIAL
09:28AM 24 ASSISTANCE," AND IT SAYS, "IF, IN ITS SOLE DISCRETION, THE
09:28AM 25 GOVERNMENT DETERMINES THAT THE DEFENDANT HAS PROVIDED

DIRECT EXAMINATION OF MELISSA RENEE STEWART BY THE GOVERNMENT

1508

09:28AM 1 SUBSTANTIAL ASSISTANCE IN THE INVESTIGATION OR PROSECUTION
09:28AM 2 OF OTHERS, THE GOVERNMENT WILL FILE A MOTION FOR DOWNWARD
09:28AM 3 DEPARTURE PURSUANT TO UNITED STATES SENTENCING GUIDELINE
09:28AM 4 SECTION 5K.1 OR A MOTION FOR REDUCTION OF SENTENCE PURSUANT
09:28AM 5 TO FEDERAL CRIMINAL RULE OF PROCEDURE 35(B). THE DEFENDANT'S
09:28AM 6 COOPERATION DOES NOT AUTOMATICALLY REQUIRE THE GOVERNMENT
09:28AM 7 TO REQUEST A DOWNWARD DEPARTURE OR A REDUCTION IN SENTENCE,
09:28AM 8 AND THE TIME FOR FILING SUCH A MOTION WILL BE DETERMINED BY
09:28AM 9 THE GOVERNMENT." SO DID YOU UNDERSTAND THAT EVEN WITH YOUR
09:28AM 10 COOPERATION AS A CONFIDENTIAL INFORMANT AND YOUR TESTIMONY
09:28AM 11 HERE TODAY, YOU ARE NOT GUARANTEED THAT THE GOVERNMENT IS
09:28AM 12 GOING TO FILE A MOTION FOR DOWNWARD DEPARTURE ON YOUR BEHALF?

09:28AM 13 A. YES.

09:28AM 14 Q. NOW, ARE YOU HOPING THAT THE GOVERNMENT DOES THAT?

09:28AM 15 A. YES.

09:28AM 16 Q. BUT HAVE I OR MS. BATSON OR THE AGENTS WORKING ON THIS
09:29AM 17 CASE EVER PROMISED YOU THAT?

09:29AM 18 A. NO.

09:29AM 19 Q. HAVE WE GUARANTEED THAT TO YOU?

09:29AM 20 A. NO.

09:29AM 21 Q. AND THEN, IN BOLD PRINT, IN THIS PARAGRAPH IT STATES,
09:29AM 22 "IT IS ENTIRELY WITHIN THE COURT'S DISCRETION AS TO WHAT, IF
09:29AM 23 ANY, REDUCTION IN SENTENCE THE DEFENDANT WILL RECEIVE." SO,
09:29AM 24 ULTIMATELY, WHO DECIDES YOUR SENTENCE?

09:29AM 25 A. THE JUDGE.

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1509

09:29AM 1 Q. JUDGE SCHELL DOES?

09:29AM 2 A. YES.

09:29AM 3 Q. OKAY. HAVE I OR MS. BATSON EVER PROMISED YOU A
09:29AM 4 SPECIFIC SENTENCE IN THIS CASE?

09:29AM 5 A. NO.

09:29AM 6 Q. HAVE WE PROMISED YOU A SPECIFIC SENTENCE IN THIS CASE
09:29AM 7 IN EXCHANGE FOR YOUR TESTIMONY HERE TODAY?

09:29AM 8 A. [MOVING HEAD SIDE TO SIDE]

09:29AM 9 Q. HAVE WE GUARANTEED YOU A SPECIFIC REDUCTION OF SENTENCE
09:29AM 10 IN THIS CASE?

09:29AM 11 A. NO, SIR.

09:29AM 12 MR. GONZALEZ: ALL RIGHT. THANK YOU, MA'AM.

09:29AM 13 I PASS THE WITNESS.

09:29AM 14 THE COURT: MR. KEMP?

09:29AM 15 CROSS-EXAMINATION OF MELISSA RENEE STEWART ON BEHALF OF THE
09:29AM 16 DEFENDANT SALAZAR

09:29AM 17 MR. KEMP:

09:29AM 18 Q. GOOD MORNING, MS. STEWART.

09:29AM 19 A. HI.

09:29AM 20 Q. HOW MUCH OF A DOWNWARD DEPARTURE ARE YOU HOPING TO GET?

09:29AM 21 A. I DON'T KNOW.

09:29AM 22 Q. JUST AS MUCH AS YOU CAN GET. RIGHT?

09:29AM 23 A. YES, SIR.

09:29AM 24 Q. WITH A LEVEL 32, I'M NOT SURE ABOUT WHAT YOUR CRIMINAL
09:29AM 25 HISTORY IS, BUT YOU ARE PROBABLY LOOKING AT SOME PRISON TIME,

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1510

09:30AM 1 ARE YOU NOT?

09:30AM 2 A. YES.

09:30AM 3 Q. AND THE FEWER DAYS THAT YOU CAN ACTUALLY SPEND
09:30AM 4 INCARCERATED, THE BETTER. CORRECT?

09:30AM 5 A. YES.

09:30AM 6 Q. YOU SAID YOU HAD TWO KIDS?

09:30AM 7 A. YES, SIR.

09:30AM 8 Q. AND HOW OLD ARE THEY?

09:30AM 9 A. 14 AND 13.

09:30AM 10 Q. SO YOU ARE CERTAINLY GOING TO DO EVERYTHING YOU CAN
09:30AM 11 DO TO WATCH THEM GRADUATE FROM HIGH SCHOOL, AREN'T YOU?

09:30AM 12 A. OH, YEAH.

09:30AM 13 Q. NOW, HOW LONG HAVE YOU BEEN WORKING AS AN INFORMANT,
09:30AM 14 AGAIN?

09:30AM 15 A. JUST SINCE I'VE BEEN OUT OF JAIL. I'M NOT SURE.

09:30AM 16 Q. SINCE YOU GOT OUT OF JAIL FOR THIS PARTICULAR OFFENSE?

09:30AM 17 A. YES.

09:30AM 18 Q. AND WHEN WAS THAT?

09:30AM 19 A. MARCH. I GOT ARRESTED THE BEGINNING OF MARCH, AND
09:30AM 20 I STAYED IN FOR, I THINK, TWO AND A HALF WEEKS.

09:30AM 21 Q. AND THAT'S MARCH OF 2012. CORRECT?

09:30AM 22 A. YES.

09:30AM 23 Q. NOW LET ME GO BACK. YOU SAID YOU STARTED IN FEBRUARY
09:30AM 24 OF 2011, AND YOU SAID YOUR SOURCE OF SUPPLY, BUT I DIDN'T CATCH
09:30AM 25 THE NAME. WHO WAS THAT?

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1511

09:30AM 1 A. HIS NAME WAS TERRELL.

09:30AM 2 Q. TERRELL? IS HE A CODEFENDANT IN THIS CASE?

09:30AM 3 A. NO.

09:30AM 4 Q. NOW, TO YOUR KNOWLEDGE, IS HE STILL OUT THERE DEALING?

09:30AM 5 A. NO. HE'S IN PRISON.

09:31AM 6 Q. NOW, YOU MENTIONED THAT YOU GOT IN TROUBLE IN APRIL.

09:31AM 7 A. YES.

09:31AM 8 Q. WHAT HAPPENED IN APRIL?

09:31AM 9 A. I GOT PULLED OVER, AND I HAD SOME PILLS ON ME, AND I
09:31AM 10 HAD SOME TEXT MESSAGES COMING THROUGH ON MY PHONE, AND THEY
09:31AM 11 HAD REASON TO BELIEVE I WAS SELLING METH, AND THEY WENT INTO
09:31AM 12 MY HOUSE.

09:31AM 13 Q. DID THEY FIND ANY METH IN YOUR HOUSE?

09:31AM 14 A. YES, SIR.

09:31AM 15 Q. HOW MUCH WAS THERE?

09:31AM 16 A. HALF-OUNCE.

09:31AM 17 Q. WAS THAT SOME YOU HAD GOTTEN FROM TERRELL, I ASSUME?

09:31AM 18 A. YES.

09:31AM 19 Q. WHAT KIND OF PILLS DID YOU HAVE ON YOU?

09:31AM 20 A. XANAXES.

09:31AM 21 Q. AND YOU DIDN'T HAVE A PRESCRIPTION FOR THAT?

09:31AM 22 A. NO, SIR.

09:31AM 23 Q. NOW, DO YOU USE METHAMPHETAMINES?

09:31AM 24 A. NO, I DON'T, SIR.

09:31AM 25 Q. HAVE YOU EVER?

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1512

09:31AM 1 A. YES, I HAVE.

09:31AM 2 Q. IS IT SAFE TO SAY THAT PILLS ARE KIND OF YOUR DRUG OF
09:31AM 3 CHOICE?

09:31AM 4 A. NO. WEED.

09:31AM 5 Q. WERE YOU SELLING WEED AS WELL?

09:31AM 6 A. NO. I TOOK XANAXES EVERY ONCE IN A WHILE, BUT, NO,
09:31AM 7 I'D RATHER SMOKE WEED.

09:31AM 8 Q. YOU GOT IN TROUBLE IN APRIL, AND YOU SAID THAT YOU
09:31AM 9 DIDN'T DO ANYTHING ELSE UNTIL JUNE. YOU JUST KIND OF GOT
09:31AM 10 SCARED, I GUESS, AND DECIDED TO CLEAN UP?

09:32AM 11 A. YEAH. AND DIDN'T HAVE THE MONEY OR ANYTHING, SO...

09:32AM 12 Q. SO WHAT DREW YOU BACK IN IN JUNE?

09:32AM 13 A. I NEEDED THE MONEY. I NEEDED TO PAY BILLS.

09:32AM 14 Q. WERE YOU WORKING AT THE TIME?

09:32AM 15 A. I HAD JUST GOT A JOB, YEAH.

09:32AM 16 Q. BUT THIS WAS JUST A MEANS OF YOU MAKING ENDS MEET?

09:32AM 17 A. YES, SIR.

09:32AM 18 Q. NOW, YOU SAID YOU MET RENE THROUGH YOUR SISTER, IS THAT
09:32AM 19 RIGHT?

09:32AM 20 A. YES.

09:32AM 21 Q. AND THAT WAS IN JUNE OF 2011?

09:32AM 22 A. NO, I DON'T REALLY KNOW WHEN THEY GOT TOGETHER. I
09:32AM 23 THINK IT WAS 2010.

09:32AM 24 Q. WELL, BUT YOU MET RENE SALAZAR IN JUNE OF 2011?
09:32AM 25 OR DID YOU KNOW HIM PRIOR?

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1513

09:32AM 1 A. I KNEW HIM WHEN HIM AND SHERRY FIRST GOT TOGETHER.

09:32AM 2 Q. DID YOU KNOW HIM BEFORE THAT OR JUST WHEN THEY GOT
09:32AM 3 TOGETHER?

09:32AM 4 A. I JUST KNEW HIM--BEFORE THEY GOT TOGETHER.

09:32AM 5 Q. NOW, YOU SAID THAT YOU HAD STARTED--YOU BEGAN WITH A
09:32AM 6 QUARTER OF AN OUNCE A DAY AND THEN GRADUALLY WORKED YOUR WAY
09:32AM 7 UP. WAS THAT SOMETHING THAT YOU STARTED INITIALLY EVERY DAY,
09:32AM 8 OR WERE YOU KIND OF WORKING INTO IT EVERY OTHER DAY?

09:32AM 9 A. WELL, I WOULD ONLY WORK, LIKE, WHILE THE KIDS WERE AT
09:33AM 10 SCHOOL, OR WHATEVER. SO ON THE WEEKENDS I DIDN'T DO ANYTHING.
09:33AM 11 IT WAS MAINLY JUST FIVE DAYS A WEEK. SO IT WAS JUST--
09:33AM 12 I GRADUATED SLOWLY UP.

09:33AM 13 Q. AND YOU SAID THAT YOU THOUGHT THAT RENE SALAZAR WAS
09:33AM 14 MOVING TO DAY STREET AROUND THIS SAME TIME WHEN YOU STARTED?

09:33AM 15 A. YEAH.

09:33AM 16 Q. WELL, NOW, AT THAT TIME, YOUR SISTER'S AND HIS
09:33AM 17 RELATIONSHIP HAD CEASED TO EXIST, IS THAT RIGHT?

09:33AM 18 A. PRETTY MUCH.

09:33AM 19 Q. WHY DID THAT OCCUR? DO YOU KNOW?

09:33AM 20 A. I HAVE NO CLUE.

09:33AM 21 Q. NOW, FROM JUNE 2011 THROUGH, I GUESS, AUGUST OF 2011,
09:33AM 22 WHEN RENE SALAZAR WENT INTO STATE CUSTODY, YOU SAID THAT 80
09:33AM 23 PERCENT OF THE TIME YOU WERE GETTING YOUR PRODUCT FROM CHARLIE,
09:33AM 24 IS THAT RIGHT?

09:33AM 25 A. YES, SIR.

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1514

09:33AM 1 Q. THROUGH THAT TIME, HOW MANY DIFFERENT TIMES DID YOU
09:33AM 2 DEAL WITH KENNETH HOUSE?

09:33AM 3 A. I DIDN'T.

09:33AM 4 Q. DID YOU EVER SEE KENNETH HOUSE?

09:34AM 5 A. OH, LET ME BACK UP. RENE WENT TO JAIL FOR, LIKE, A
09:34AM 6 WEEK FOR--HE FAILED A UA. AND I HAD TO GO TO KENNETH HOUSE
09:34AM 7 ONE TIME.

09:34AM 8 Q. WHEN DID HE GO TO JAIL FOR A WEEK?

09:34AM 9 A. I DON'T HAVE NO CLUE.

09:34AM 10 Q. OKAY.

09:34AM 11 A. I DON'T KNOW EXACTLY WHEN HE WENT TO JAIL FOR THAT WEEK.

09:34AM 12 Q. SO YOU SAID ONLY ONE TIME DID YOU DEAL WITH HOUSE?

09:34AM 13 A. YES.

09:34AM 14 Q. NOW, YOU TESTIFIED THAT THROUGH THAT TIME PERIOD THAT
09:34AM 15 YOU WERE WORKING FIVE DAYS A WEEK, IS THAT RIGHT?

09:34AM 16 A. YES, SIR.

09:34AM 17 Q. SO, THEN, HOW WOULD YOU BE ABLE TO DISTRIBUTE PRODUCT
09:34AM 18 TO YOUR CUSTOMERS IF YOU ONLY WENT ONE TIME THAT WEEK WITH
09:34AM 19 HOUSE?

09:34AM 20 A. I'M SORRY. I DIDN'T UNDERSTAND THAT.

09:34AM 21 Q. YOU SAID YOU DIDN'T USE. CORRECT?

09:34AM 22 A. RIGHT.

09:34AM 23 Q. SO YOU HAD AN ESTABLISHED CUSTOMER BASE, DID YOU NOT?

09:34AM 24 A. YES.

09:34AM 25 Q. AND IT WAS YOUR TESTIMONY THAT FOR FIVE DAYS A WEEK

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1515

09:34AM 1 YOU WERE GETTING METHAMPHETAMINE TO DISTRIBUTE TO YOUR CUSTOMER
09:35AM 2 BASE?

09:35AM 3 A. YES.

09:35AM 4 Q. THROUGH JUNE--JUNE TO AUGUST 2011?

09:35AM 5 A. YES.

09:35AM 6 Q. YOU TESTIFIED THAT WHEN RENE SALAZAR WENT TO JAIL FOR
09:35AM 7 A WEEK PERIOD OF TIME THAT YOU DEALT WITH KENNETH HOUSE ONLY
09:35AM 8 ONE TIME, IS THAT RIGHT?

09:35AM 9 A. YEAH. AND I WENT AND PICKED UP I THINK IT WAS AN OUNCE
09:35AM 10 OR MAYBE A HALF-OUNCE. I'M NOT REAL SURE.

09:35AM 11 Q. THEN, HOW WERE YOU ABLE TO SUPPLY YOUR EXISTING
09:35AM 12 CUSTOMER BASE IF YOU ONLY WENT TO KENNETH HOUSE THAT ONE TIME?

09:35AM 13 A. I GUESS DURING THAT WEEK--I MEAN, I ONLY SOLD SO MUCH--
09:35AM 14 I DON'T KNOW.

09:35AM 15 Q. YOU SAID THAT YOU HAD KNOWN KENNETH HOUSE FOR A LONG
09:35AM 16 TIME, IS THAT RIGHT?

09:35AM 17 A. YES.

09:35AM 18 Q. DID YOU GO TO SCHOOL WITH HIM?

09:35AM 19 A. [MOVING HEAD UP AND DOWN]

09:35AM 20 Q. HOW LONG DID YOU KNOW HE WAS DEALING METHAMPHETAMINES?

09:35AM 21 A. WHEN HIM--WHEN HIM AND RENE WERE WORKING TOGETHER.

09:35AM 22 Q. SO YOU NEVER KNEW THAT HE WAS DEALING--

09:35AM 23 A. NO, I THOUGHT HE WAS JUST A USER, HONESTLY.

09:36AM 24 Q. YOU THOUGHT HE WAS A USER SINCE THE DAYS YOU WERE IN
09:36AM 25 HIGH SCHOOL?

CROSS-EXAMINATION OF MELISSA RENEE STEWART BY DEFENDANT SALAZAR

1516

09:36AM 1 A. NO. I HADN'T SEEN HIM FROM SINCE HIGH SCHOOL. FOR
09:36AM 2 YEARS, I DIDN'T SEE HIM.

09:36AM 3 Q. I BELIEVE YOU ALSO TESTIFIED THAT YOU HAD MET MIKE
09:36AM 4 CAMACHO THROUGH RENE. IS THAT RIGHT?

09:36AM 5 A. YES.

09:36AM 6 Q. HAD YOU EVER SEEN MIKE CAMACHO BEFORE?

09:36AM 7 A. NO.

09:36AM 8 Q. HOW MANY TIMES DID YOU SEE MIKE CAMACHO WITH RENE
09:36AM 9 SALAZAR?

09:36AM 10 A. JUST ONE TIME.

09:36AM 11 Q. BUT HE DIDN'T TELL YOU HE WAS MAKING THIS INTRODUCTION
09:36AM 12 TO YOU AS A SOURCE OF SUPPLY, DID HE?

09:36AM 13 A. NO. HE JUST INTRODUCED ME TO HIM.

09:36AM 14 MR. KEMP: PASS THE WITNESS, YOUR HONOR.

09:36AM 15 THE COURT: MR. WHALEN, ANY QUESTIONS?

09:36AM 16 MR. WHALEN: I HAVE NO QUESTIONS.

09:36AM 17 THE COURT: MR. PETRAZIO?

09:36AM 18 MR. PETRAZIO: NO QUESTIONS.

09:36AM 19 THE COURT: ALL RIGHT.

09:36AM 20 MR. GONZALEZ, ANYTHING ELSE?

09:36AM 21 MR. GONZALEZ: NOTHING FURTHER.

09:36AM 22 THE COURT: IS THIS WITNESS EXCUSED, THEN?

09:36AM 23 MR. GONZALEZ: YES, YOUR HONOR.

09:36AM 24 THE COURT: ALL RIGHT.

09:36AM 25 MS. STEWART, THANK YOU. I NEED TO TELL YOU THAT YOU

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1517

09:37AM 1 CANNOT DISCUSS YOUR TESTIMONY THAT YOU HAVE GIVEN HERE WITH ANY
09:37AM 2 OTHER WITNESSES IN THIS CASE UNTIL WE HAVE FINISHED THE TRIAL.

09:37AM 3 THE WITNESS: YES, SIR. THANK YOU.

09:37AM 4 MS. BATSON: YOUR HONOR, WE CALL BRIAN MCCLARAN.

09:37AM 5 THE COURT: OKAY. OFFICER, IF YOU WILL COME UP AND
09:37AM 6 BE PLACED UNDER OATH.

09:37AM 7 DEPUTY COURT CLERK: YOU DO SOLEMNLY SWEAR THAT THE
09:37AM 8 TESTIMONY YOU SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE
09:37AM 9 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP
09:37AM 10 YOU GOD.

09:37AM 11 THE WITNESS: I DO.

09:37AM 12 THE COURT: ALL RIGHT, MS. BATSON.

09:37AM 13 DIRECT EXAMINATION OF BRIAN MCCLARAN ON BEHALF OF THE GOVERNMENT

09:37AM 14 MS. BATSON: THANK YOU, YOUR HONOR.

09:37AM 15 Q. STATE YOUR NAME FOR THE RECORD, PLEASE.

09:37AM 16 A. BRIAN MCCLARAN.

09:37AM 17 Q. AND HOW ARE YOU EMPLOYED?

09:37AM 18 A. I AM CURRENTLY EMPLOYED BY THE SHERMAN POLICE
09:37AM 19 DEPARTMENT AS A NARCOTICS DETECTIVE.

09:37AM 20 Q. AND HOW LONG HAVE YOU BEEN WITH SHERMAN P.D.?

09:37AM 21 A. OVER FIVE YEARS.

09:37AM 22 Q. AND HOW LONG HAVE YOU BEEN IN THE NARCOTICS SECTION?

09:38AM 23 A. APPROXIMATELY FOUR YEARS.

09:38AM 24 Q. NOW, IN JULY OF 1999, WERE YOU WORKING WITH SHERMAN
09:38AM 25 P.D. THEN?

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1518

09:38AM 1 A. YES, I WAS.

09:38AM 2 Q. AND AT THAT TIME DID OFFICERS WITH THE SHERMAN POLICE
09:38AM 3 DEPARTMENT, INCLUDING YOURSELF--DID Y'ALL RECEIVE INFORMATION
09:38AM 4 FROM A CONFIDENTIAL INFORMANT THAT DEFENDANT TIMOTHY BOWEN WAS
09:38AM 5 DISTRIBUTING CRACK COCAINE?

09:38AM 6 MR. WHALEN: I OBJECT.

09:38AM 7 THE COURT: WAIT A MINUTE.

09:38AM 8 MR. WHALEN: MAY WE APPROACH?

09:38AM 9 THE COURT: I NEED TO PUT IT ON THE RECORD IF YOU
09:38AM 10 HAVE SOMETHING TO SAY.

09:38AM 11 LADIES AND GENTLEMEN, I NEED TO TAKE THIS UP OUTSIDE
09:38AM 12 YOUR PRESENCE. WOULD YOU GO WITH THE COURT OFFICER, PLEASE.

09:38AM 13 COURT SECURITY OFFICER: ALL RISE.

09:39AM 14 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

09:39AM 15 THE COURT: ALL RIGHT. BE SEATED, PLEASE.

09:39AM 16 IS YOUR OBJECTION "HEARSAY"?

09:39AM 17 MR. WHALEN: YOUR HONOR, YES, HEARSAY, BUT ALSO WE
09:39AM 18 WOULD OBJECT--

09:39AM 19 DEPUTY COURT CLERK: TURN ON YOUR MIKE, PLEASE.

09:39AM 20 MR. WHALEN: WE WOULD OBJECT TO THE UNDERLYING FACTS
09:39AM 21 CONCERNING EACH OFFENSE. I MEAN, I THINK THEY CAN--

09:39AM 22 THE COURT: CONCERNING EACH OFFENSE?

09:39AM 23 MR. WHALEN: WELL, EACH CONVICTION. THEY'VE ALLEGED
09:39AM 24 TWO PRIOR CONVICTIONS UNDER 404(B). AND SO WE'RE GOING TO
09:39AM 25 OBJECT TO THE UNDERLYING FACTS ABOUT THOSE OFFENSES. THEY'VE

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1519

09:39AM 1 PUT ON THEIR NOTICE ABOUT THE CONVICTIONS AND PROVIDED THE
09:39AM 2 JUDGMENTS AND SENTENCES AND REPORTS, BUT WE WOULD OBJECT TO
09:39AM 3 THE UNDERLYING FACTS. THE FACT HE HAS CONVICTIONS, I THINK,
09:39AM 4 SATISFIES THE NECESSITY UNDER 404(B) THAT IT'S A SIMILAR ACT.
09:39AM 5 WE WOULD OBJECT TO--

09:39AM 6 THE COURT: THE QUESTION BY MS. BATSON HAD TO DO
09:39AM 7 WITH--NOT WITH EXTRANEIOUS OFFENSES, BUT EVENTS INTRINSIC TO
09:40AM 8 THIS CHARGED CRIME.

09:40AM 9 CORRECT?

09:40AM 10 MS. BATSON: YOUR HONOR, THIS WOULD BE THE 404(B).
09:40AM 11 THIS WAS A 1999 INFORMATION JUST ON TIMOTHY BOWEN.

09:40AM 12 THE COURT: THAT WAS IN 1999?

09:40AM 13 MS. BATSON: 1999, YES, SIR.

09:40AM 14 THE COURT: OKAY. WAIT A MINUTE.

09:40AM 15 MS. BATSON: SO, YOUR HONOR, IF I UNDERSTAND
09:40AM 16 MR. WHALEN CORRECTLY, HE--

09:40AM 17 MAY I HAVE A MINUTE WITH MR. WHALEN?

09:40AM 18 THE COURT: YES.

09:40AM 19 MS. BATSON: I'M TRYING TO SEE HOW...

09:40AM 20 [OFF-THE-RECORD DISCUSSION BETWEEN COUNSEL]

09:43AM 21 THE COURT: WHICH ONE OF THESE TWO OFFENSES WAS
09:43AM 22 MENTIONED YESTERDAY AND MR. WHALEN ASKED ME TO INSTRUCT THE
09:43AM 23 JURY, GIVE A LIMITING INSTRUCTION?

09:43AM 24 MS. BATSON: I JUST ASKED YESTERDAY, WITH MS. BOWEN,
09:43AM 25 IF SHE WAS AWARE THAT TIM BOWEN HAD BEEN CONVICTED OF THE

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1520

09:43AM 1 DISTRIBUTION OF CRACK COCAINE.

09:43AM 2 THE COURT: OKAY. AND HE HAS A FEDERAL CONVICTION
09:43AM 3 FOR CRACK COCAINE, AND A STATE CONVICTION? BOTH FOR CRACK
09:43AM 4 COCAINE?

09:43AM 5 MS. BATSON: RIGHT. THE FEDERAL CONVICTION IS
09:43AM 6 CONSPIRACY, YOUR HONOR.

09:43AM 7 THE COURT: OKAY. ALL RIGHT. SO I HAVE AN
09:43AM 8 OBJECTION TO YOUR QUESTION WHETHER HE LEARNED IN 1999 THAT
09:43AM 9 MR. BOWEN WAS DISTRIBUTING DRUGS. WHICH OF THE TWO CASES
09:44AM 10 DOES THAT REFER TO, THE STATE CASE OR--

09:44AM 11 MS. BATSON: BOTH.

09:44AM 12 THE COURT: --FEDERAL? BOTH OF THEM?

09:44AM 13 MS. BATSON: YES, BOTH OF THEM. I BELIEVE
09:44AM 14 MR. WHALEN--IN CONVERSATION WITH MR. WHALEN, HE IS OBJECTING TO
09:44AM 15 US GOING INTO THE FACTS OF THOSE PRIOR CONVICTIONS. BUT HE'S
09:44AM 16 UNABLE TO STIPULATE TO THE PRIOR CONVICTIONS THEMSELVES. AND
09:44AM 17 SO WHAT I INFORMED HIM WAS NORMALLY IN THE PRESENTATION OF
09:44AM 18 404(B), WE PRESENT AN OFFICER WHO WAS INVOLVED AT THE TIME WHO
09:44AM 19 IS FAMILIAR WITH THE FACTS AND CAN TESTIFY AND IDENTIFY THE
09:44AM 20 DEFENDANT, AND WE GO INTO THE FACTS TO PROVE UP THE CONVICTION.
09:44AM 21 SO... BUT HE WANTS TO OBJECT TO US GOING INTO UNDERLYING
09:44AM 22 FACTS.

09:44AM 23 THE COURT: WELL, YOU DON'T NEED TO GO INTO ANY
09:44AM 24 DETAIL ON THE UNDERLYING--OR THE 404(B) EVIDENCE. I DON'T
09:44AM 25 KNOW WHAT YOU WANT TO ASK. MAYBE IT'S TOO EARLY. MAYBE IT'S

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1521

09:44AM 1 PREMATURE HERE.

09:45AM 2 MS. BATSON: DO YOU WANT ME TO ASK IT NOW, YOUR
09:45AM 3 HONOR, OUTSIDE THE PRESENCE OF THE JURY?

09:45AM 4 THE COURT: SURE. I HAVE MADE A RULING ON THIS,
09:45AM 5 THOUGH, AND I'M GOING TO ALLOW THE GOVERNMENT--AND I SAID SO
09:45AM 6 IN MY ORDER WHICH I SIGNED, LET'S SEE, DECEMBER 3RD, 2012,
09:45AM 7 THAT THE GOVERNMENT MAY OFFER EVIDENCE OF THE TWO SIMILAR-ACT
09:45AM 8 CONVICTIONS OF MR. BOWEN. ONE WAS IN FEDERAL COURT, CAUSE
09:45AM 9 NUMBER 4:01CR29, AND THAT WAS IN--THE ARREST WAS IN 2001. I'M
09:45AM 10 NOT SURE WHEN HE WAS ULTIMATELY CONVICTED. BUT, ANYWAY. AND
09:45AM 11 THEN THERE WAS A FEBRUARY 13TH, 2002, CONVICTION IN STATE
09:45AM 12 COURT. WERE THEY TWO SEPARATE--WELL, LET'S SEE. ONE WAS
09:45AM 13 CONSPIRACY, ONE WAS DELIVERY. DID THE CONSPIRACY ENCOMPASS
09:46AM 14 THE STATE DELIVERY?

09:46AM 15 MS. BATSON: YES, YOUR HONOR.

09:46AM 16 THE COURT: OKAY.

09:46AM 17 MS. BATSON: BUT THERE ARE STILL TWO SEPARATE
09:46AM 18 CONVICTIONS.

09:46AM 19 THE COURT: I UNDERSTAND. DO YOU WANT TO JUST ASK
09:46AM 20 WHATEVER QUESTIONS YOU HAVE?

09:46AM 21 MS. BATSON: SURE.

09:46AM 22 Q. NOW, ARE YOU A DETECTIVE?

09:46AM 23 A. YES, MA'AM.

09:46AM 24 Q. OKAY. DETECTIVE MCCLARAN, YOU STATED THAT IN 1999 YOU
09:46AM 25 WERE WORKING WITH THE SHERMAN POLICE DEPARTMENT. BUT, I MEAN,

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1522

09:46AM 1 WERE YOU WORKING FOR POTTSBORO, BUT ASSISTING SHERMAN POLICE
09:46AM 2 DEPARTMENT?

09:46AM 3 A. I WAS WORKING FOR POTTSBORO, ASSISTING SHERMAN POLICE
09:46AM 4 DEPARTMENT.

09:46AM 5 Q. OKAY. ALL RIGHT. SO THAT WAS--ALL RIGHT. BAD
09:46AM 6 QUESTION. SO HOPEFULLY THAT CLARIFIED ANY ISSUES THERE.

09:46AM 7 AND WHEN YOU WERE ASSISTING THE SHERMAN POLICE
09:46AM 8 DEPARTMENT, WERE YOU AWARE THAT THEY HAD RECEIVED INFORMATION
09:46AM 9 FROM A CONFIDENTIAL INFORMANT THAT DEFENDANT TIMOTHY BOWEN WAS
09:46AM 10 SELLING CRACK COCAINE?

09:46AM 11 A. YES, I WAS.

09:46AM 12 Q. AND WAS HE SELLING FROM A RESIDENCE?

09:46AM 13 A. YES; 308 SOUTH DEWEY.

09:46AM 14 Q. OKAY. AND BASED ON THE INFORMATION RECEIVED FROM THE
09:47AM 15 CONFIDENTIAL INFORMANT, DID YOU SET UP VIDEO SURVEILLANCE AT
09:47AM 16 THAT RESIDENCE?

09:47AM 17 A. YES, WE DID.

09:47AM 18 Q. OKAY. AND DURING THE VIDEO SURVEILLANCE, WAS THE
09:47AM 19 DEFENDANT SEEN DISTRIBUTING NUMEROUS TIMES--CRACK COCAINE
09:47AM 20 NUMEROUS TIMES?

09:47AM 21 A. YES, HE WAS.

09:47AM 22 Q. AND THE DISTRIBUTION OF THAT CRACK COCAINE LED TO TWO
09:47AM 23 SEPARATE CONVICTIONS?

09:47AM 24 A. YES, IT DID.

09:47AM 25 Q. ONE FEDERALLY IN 2001?

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1523

09:47AM 1 A. YES, THAT'S CORRECT.

09:47AM 2 Q. AND ONE STATE CHARGE OF DISTRIBUTION OF CRACK COCAINE
09:47AM 3 IN 2002?

09:47AM 4 A. YES, MA'AM.

09:47AM 5 MS. BATSON: OKAY.

09:47AM 6 THE COURT: OKAY.

09:47AM 7 MS. BATSON: AND, THEN, YOUR HONOR, I CAN USE THE
09:47AM 8 JUDGMENTS, PUT THEM IN AS EVIDENCE. I--YOU KNOW, I HAD TOLD
09:47AM 9 MR. WHALEN--

09:47AM 10 THE COURT: I DON'T KNOW THAT YOU NEED TO.

09:47AM 11 MS. BATSON: I TOLD MR. WHALEN I NORMALLY DON'T
09:47AM 12 DO THAT, BUT IF HE WANTS TO OBJECT TO THAT, I MEAN, I HAVE
09:47AM 13 TO PROVE THEM UP, AND SO I COULD PUT THEM IN AS EXHIBITS.

09:47AM 14 MR. WHALEN: I WOULD SAY IF THAT'S THE EXTENT OF THE
09:47AM 15 OFFER, I WON'T PROFFER ANY OBJECTION TO THOSE QUESTIONS. I'M
09:48AM 16 NOT WAIVING MY OVERALL OBJECTION TO THE 404(B). I WANT TO MAKE
09:48AM 17 THAT CLEAR. AND THEN I WOULD ASK THAT WHEN THE JURY COMES BACK
09:48AM 18 IN, I WOULD MAKE A REQUEST THAT THE COURT GIVE A LIMITING
09:48AM 19 INSTRUCTION NOW THAT THE TESTIMONY THEY'RE ABOUT TO HEAR IS
09:48AM 20 BEING OFFERED FOR THIS PURPOSE AND LIMITED TO THAT PURPOSE.

09:48AM 21 THE COURT: OKAY.

09:48AM 22 MS. BATSON, SO THOSE ARE THE QUESTIONS YOU WANT TO
09:48AM 23 ASK?

09:48AM 24 MS. BATSON: YES, THAT'S IT, YOUR HONOR. AND THEN,
09:48AM 25 AS MR. WHALEN STATED, IF YOU WANT TO GIVE THE LIMITING

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1524

09:48AM 1 INSTRUCTION WHEN THE JURY COMES BACK IN, AND I GUESS WHEN IT'S
09:48AM 2 OVER AGAIN GIVE IT TO THEM AND SAY NOW THAT THEY'VE HEARD IT,
09:48AM 3 THEY, AGAIN, CAN ONLY CONSIDER IT FOR... AND, YOUR HONOR, WE
09:48AM 4 WOULD ASK FOR THE INSTRUCTION IN--CITED IN 1.30 OF THE PATTERN
09:48AM 5 JURY INSTRUCTIONS ON PAGE 46, THAT THAT WOULD BE THE LIMITING
09:49AM 6 INSTRUCTION GIVEN TO THE JURY.

09:49AM 7 THE COURT: OKAY.

09:49AM 8 ARE YOU READY?

09:49AM 9 MR. WHALEN: YES, YOUR HONOR.

09:49AM 10 MS. BATSON: YES, YOUR HONOR.

09:49AM 11 THE COURT: LET'S BRING THE JURY BACK IN.

09:50AM 12 COURT SECURITY OFFICER: ALL RISE.

09:50AM 13 [OPEN COURT, DEFENDANTS AND JURY PRESENT]

09:50AM 14 THE COURT: ALL RIGHT. PLEASE TAKE YOUR SEATS.

09:50AM 15 LADIES AND GENTLEMEN, I GAVE YOU A SIMILAR
09:50AM 16 INSTRUCTION YESTERDAY, BUT LET ME TELL YOU THAT IN THE CASE
09:50AM 17 OF DETECTIVE MCCLARAN, YOU ARE ABOUT TO HEAR TESTIMONY FROM
09:50AM 18 HIM REGARDING ACTS OF THE DEFENDANT TIMOTHY BOWEN WHICH MAY BE
09:50AM 19 SIMILAR TO THOSE ACTS THAT ARE CHARGED IN THE INDICTMENT IN
09:50AM 20 THIS CASE, BUT WHICH WERE COMMITTED ON OTHER OCCASIONS. YOU
09:50AM 21 MAY NOT CONSIDER ANY OF THIS TESTIMONY IN DECIDING IF MR. BOWEN
09:51AM 22 COMMITTED THE ACT FOR WHICH HE IS ON TRIAL NOW, WHICH IS THE
09:51AM 23 ACCUSATION OF CONSPIRING WITH OTHERS TO POSSESS WITH INTENT
09:51AM 24 TO DISTRIBUTE METHAMPHETAMINE. HOWEVER, YOU CAN CONSIDER THE
09:51AM 25 TESTIMONY FROM DETECTIVE MCCLARAN THAT YOU ARE ABOUT TO HEAR

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

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09:51AM 1 FOR VERY LIMITED PURPOSES. AND THAT IS, IF YOU FIND BEYOND
09:51AM 2 A REASONABLE DOUBT FROM OTHER EVIDENCE IN THIS TRIAL THAT
09:51AM 3 MR. BOWEN DID COMMIT THE ACTS FOR WHICH HE IS ON TRIAL RIGHT
09:51AM 4 NOW, THEN YOU MAY CONSIDER THIS TESTIMONY OF SIMILAR ACTS
09:51AM 5 ALLEGEDLY COMMITTED ON OTHER OCCASIONS FOR THE PURPOSE OF
09:51AM 6 DETERMINING WHETHER OR NOT MR. BOWEN HAD THE STATE OF MIND
09:51AM 7 OR THE INTENT NECESSARY TO COMMIT THE CRIME CHARGED IN THIS
09:51AM 8 INDICTMENT THAT HE'S ON TRIAL FOR NOW, WHETHER HE HAD THE
09:51AM 9 MOTIVE OR THE OPPORTUNITY TO COMMIT THE ACTS CHARGED IN
09:51AM 10 THE INDICTMENT, WHETHER HE ACTED ACCORDING TO A PLAN OR IN
09:52AM 11 PREPARATION FOR COMMISSION OF A CRIME, OR WHETHER HE COMMITTED
09:52AM 12 THE ACTS FOR WHICH HE IS ON TRIAL BY ACCIDENT OR MISTAKE.
09:52AM 13 THOSE ARE THE LIMITED PURPOSES FOR WHICH YOU CAN CONSIDER THIS
09:52AM 14 TESTIMONY THAT YOU ARE ABOUT TO HEAR ABOUT OTHER SIMILAR ACTS
09:52AM 15 BY MR. BOWEN.

09:52AM 16 OKAY, MS. BATSON.

09:52AM 17 MS. BATSON: THANK YOU, YOUR HONOR.

09:52AM 18 Q. DETECTIVE MCCLARAN, IN 1999, SPECIFICALLY, IN JULY OF
09:52AM 19 1999, WHERE WERE YOU EMPLOYED?

09:52AM 20 A. I WAS EMPLOYED BY THE POTTSBORO POLICE DEPARTMENT.

09:52AM 21 Q. OKAY. AND DID YOU ASSIST THE SHERMAN POLICE DEPARTMENT
09:52AM 22 WITH AN INVESTIGATION THEY HAD GOING ON THAT INCLUDED THE
09:52AM 23 DEFENDANT TIMOTHY BOWEN?

09:52AM 24 A. YES, MA'AM, I DID.

09:52AM 25 Q. NOW, IN 1999, DID THE SHERMAN POLICE DEPARTMENT RECEIVE

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1526

09:52AM 1 INFORMATION FROM A CONFIDENTIAL INFORMANT THAT NUMEROUS
09:52AM 2 INDIVIDUALS, INCLUDING THE DEFENDANT TIMOTHY BOWEN--THAT THEY
09:52AM 3 WERE DISTRIBUTING CRACK COCAINE FROM A PARTICULAR RESIDENCE IN
09:52AM 4 SHERMAN?

09:52AM 5 A. YES, THEY DID.

09:52AM 6 Q. AND WHAT RESIDENCE WAS THAT?

09:53AM 7 A. 308 SOUTH DEWEY STREET, SHERMAN, TEXAS.

09:53AM 8 Q. ALL RIGHT. AND IS THAT--WHEN THE CONFIDENTIAL
09:53AM 9 INFORMANT PROVIDED THAT INFORMATION, DID OFFICERS SET UP
09:53AM 10 VIDEO SURVEILLANCE AT THAT RESIDENCE?

09:53AM 11 A. YES, THEY DID.

09:53AM 12 Q. OKAY. AND DURING THAT VIDEO SURVEILLANCE, WAS THE
09:53AM 13 DEFENDANT TIMOTHY BOWEN SEEN DISTRIBUTING CRACK COCAINE ON
09:53AM 14 NUMEROUS OCCASIONS?

09:53AM 15 A. YES, HE WAS.

09:53AM 16 Q. AND BASED ON THE EVIDENCE GATHERED DURING THE
09:53AM 17 INVESTIGATION, INCLUDING THE VIDEO SURVEILLANCE, WAS DEFENDANT
09:53AM 18 TIMOTHY BOWEN CHARGED FEDERALLY WITH CONSPIRACY TO DISTRIBUTE
09:53AM 19 CRACK COCAINE?

09:53AM 20 A. YES, HE WAS.

09:53AM 21 Q. AND THEN IN THE STATE FOR THE DISTRIBUTION OF CRACK
09:53AM 22 COCAINE?

09:53AM 23 A. YES, HE WAS.

09:53AM 24 Q. AND WAS HE CONVICTED IN 2001 OF THE FEDERAL CONSPIRACY?

09:53AM 25 A. YES, HE WAS.

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

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09:53AM 1 Q. AND THEN IN 2002 FOR THE STATE DISTRIBUTION?

09:53AM 2 A. YES, HE WAS.

09:53AM 3 Q. NOW, YOU'VE BEEN ONE OF THE CASE AGENTS ON THIS CASE

09:54AM 4 THAT WE'RE HERE ON TODAY, IS THAT CORRECT?

09:54AM 5 A. YES, MA'AM, THAT'S CORRECT.

09:54AM 6 Q. AND YOU'VE SEEN THE NUMEROUS EXHIBITS THAT HAVE BEEN

09:54AM 7 OFFERED BY THE GOVERNMENT?

09:54AM 8 A. YES, MA'AM, I HAVE.

09:54AM 9 Q. OKAY. AND IF YOU COULD LOOK AT GOVERNMENT'S EXHIBIT 67

09:54AM 10 IN THAT BOOK, I BELIEVE IT'S BEEN SHOWN, BUT I JUST WANT TO

09:54AM 11 MAKE SURE THAT IT'S BEEN ENTERED INTO EVIDENCE. DO YOU SEE

09:54AM 12 THAT PHOTOGRAPH THERE?

09:54AM 13 A. YES, MA'AM, I DO.

09:54AM 14 Q. AND WHAT IS IT?

09:54AM 15 A. THAT IS A PHOTOGRAPH OF THE DODGE MAGNUM THAT CARLOS

09:54AM 16 CABRALES DRIVES.

09:54AM 17 MS. BATSON: OKAY.

09:54AM 18 YOUR HONOR, AT THIS TIME I MOVE TO ADMIT

09:54AM 19 GOVERNMENT'S EXHIBIT 67 INTO EVIDENCE.

09:54AM 20 MR. WHALEN: NO OBJECTION.

09:54AM 21 MR. PETRAZIO: NO OBJECTION.

09:54AM 22 MR. KEMP: NO OBJECTION.

09:54AM 23 THE COURT: ALL RIGHT. GOVERNMENT'S EXHIBIT 67 IS

09:54AM 24 ADMITTED.

09:54AM 25 MS. BATSON: YOUR HONOR, MAY I HAVE A MINUTE?

DIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

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09:55AM 1 THE COURT: YES.

09:55AM 2 MS. BATSON:

09:55AM 3 Q. NOW, DETECTIVE MCCLARAN, AS YOU JUST TOLD THIS JURY,
09:55AM 4 DEFENDANT BOWEN WAS CONVICTED IN 2001 OF CONSPIRACY TO POSSESS
09:55AM 5 WITH INTENT TO DISTRIBUTE CRACK COCAINE, AND IN 2002 OF A STATE
09:55AM 6 CHARGE OF THE DISTRIBUTION OF CRACK COCAINE.

09:55AM 7 A. YES, MA'AM.

09:55AM 8 Q. OKAY. AND ARE YOU AWARE OF THE TERM "DUAL
09:55AM 9 SOVEREIGNTY"?

09:55AM 10 A. YES, MA'AM, I AM.

09:55AM 11 Q. AND WHAT DOES THAT MEAN?

09:55AM 12 A. THAT GIVES THE STATE OF TEXAS THE RIGHT TO PROSECUTE
09:55AM 13 THEIR STATUTES AND CRIMINAL OFFENSES, AS WELL AS THE FEDERAL
09:55AM 14 GOVERNMENT HAS THEIR OWN STATUTES AND CRIMINAL OFFENSES THAT
09:55AM 15 THEY CAN PROSECUTE SEPARATELY.

09:55AM 16 Q. OKAY. SO, EVEN IF SOME INCIDENTS OVERLAP, THE FEDERAL
09:55AM 17 SOVEREIGNTY IS DIFFERENT FROM THE STATE SOVEREIGNTY AND WE CAN
09:55AM 18 EACH DO OUR OWN PROSECUTIONS, IS THAT CORRECT?

09:55AM 19 A. YES, MA'AM, THAT'S CORRECT.

09:55AM 20 MS. BATSON: NO FURTHER QUESTIONS.

09:55AM 21 THE COURT: ALL RIGHT.

09:55AM 22 MR. KEMP?

09:55AM 23 MR. KEMP: NO QUESTIONS, YOUR HONOR.

09:56AM 24 THE COURT: MR. WHALEN?

09:56AM 25

CROSS-EXAMINATION OF BRIAN MCCLARAN BY DEFENDANT BOWEN

1529

CROSS-EXAMINATION OF BRIAN MCCLARAN ON BEHALF OF THE DEFENDANT

BOWEN

MR. WHALEN:

Q. DETECTIVE MCCLARAN, JUST SO WE'RE CLEAR, EVEN THOUGH THE STATE OFFENSE--THE CONVICTION WAS IN 2002, THE DATE OF THE OFFENSE WAS IN 1999, IS THAT CORRECT?

A. YES, SIR, THAT IS CORRECT.

Q. SO THAT OFFENSE IN 1999, THAT WAS ENCOMPASSED IN THE FEDERAL CONSPIRACY INDICTMENT. CORRECT?

A. YES, SIR, THAT'S CORRECT.

Q. AND SO THE ACTS THAT WERE ALLEGED IN THE FEDERAL CONSPIRACY, THAT STATE CHARGE WAS PART OF THOSE ACTS, IS THAT RIGHT?

A. YES, SIR, THAT'S CORRECT.

Q. AND THAT ALL OCCURRED IN 1999?

A. THAT IS CORRECT, SIR.

Q. AND THAT WAS 13 YEARS AGO. CORRECT?

A. YES, SIR, THAT'S CORRECT.

MR. WHALEN: I'LL PASS THE WITNESS.

THE COURT: MS. BATSON?

REDIRECT EXAMINATION OF BRIAN MCCLARAN ON BEHALF OF THE

GOVERNMENT

MS. BATSON:

Q. JUST TO CLARIFY, DETECTIVE MCCLARAN, THE DEFENDANT WAS SEEN NUMEROUS TIMES DISTRIBUTING CRACK COCAINE?

REDIRECT EXAMINATION OF BRIAN MCCLARAN BY THE GOVERNMENT

1530

09:56AM 1 A. YES, MA'AM, THAT'S CORRECT.

09:57AM 2 Q. AND THE STATE CONVICTION ONLY CHARGES HIM WITH ONE OF
09:57AM 3 THOSE, IS THAT CORRECT?

09:57AM 4 A. YES, MA'AM, THAT'S CORRECT.

09:57AM 5 Q. AND THAT WOULD BE OCTOBER 26TH, I BELIEVE, OF 1999?

09:57AM 6 A. YES, MA'AM, I BELIEVE THAT'S CORRECT.

09:57AM 7 Q. AND THE CONSPIRACY--THE FEDERAL CONSPIRACY CHARGED HIM
09:57AM 8 AND OTHERS WITH THE OVERALL DISTRIBUTION AND INCLUDED ALL OF
09:57AM 9 THE TIMES THE DEFENDANT WAS SEEN DISTRIBUTING, IS THAT CORRECT?

09:57AM 10 A. YES, MA'AM, THAT'S CORRECT.

09:57AM 11 MS. BATSON: NO FURTHER QUESTIONS.

09:57AM 12 THE COURT: MR. WHALEN, ANYTHING FURTHER?

09:57AM 13 MR. WHALEN: NOTHING FURTHER.

09:57AM 14 THE COURT: THERE BEING NO FURTHER QUESTIONS, THEN,
09:57AM 15 THANK YOU, DETECTIVE MCCLARAN.

09:57AM 16 THE WITNESS: THANK YOU.

09:57AM 17 THE COURT: OKAY.

09:57AM 18 MS. BATSON: YOUR HONOR, AT THIS TIME THE UNITED
09:57AM 19 STATES RESTS ITS CASE-IN-CHIEF.

09:57AM 20 THE COURT: ALL RIGHT. THANK YOU.

09:57AM 21 LET ME ASK DEFENSE COUNSEL: DO YOU WANT A RECESS?

09:57AM 22 MR. WHALEN: YES, PLEASE.

09:57AM 23 MR. KEMP: YES, PLEASE.

09:57AM 24 MR. PETRAZIO: YES, PLEASE.

09:57AM 25 THE COURT: ALL RIGHT.

09:57AM 1 LADIES AND GENTLEMEN, THE GOVERNMENT HAS RESTED ITS
09:58AM 2 CASE. THE NEXT STEP IS FOR ME TO TAKE UP SOME MATTERS OUTSIDE
09:58AM 3 YOUR PRESENCE. SO WE WILL TAKE A RECESS AT THIS TIME.

09:58AM 4 COURT SECURITY OFFICER: ALL RISE.

09:58AM 5 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

09:58AM 6 THE COURT: PLEASE BE SEATED.

09:58AM 7 MR. KEMP, I'LL START WITH YOU, OR WHOEVER WANTS TO
09:58AM 8 START. IT DOESN'T MATTER.

09:58AM 9 MR. KEMP: YOUR HONOR, AT THIS TIME, ON BEHALF OF
09:58AM 10 MR. SALAZAR, WE WOULD MAKE A RULE 29 MOTION FOR A JUDGMENT OF
09:58AM 11 ACQUITTAL ON THE BASIS OF THE INSUFFICIENCY OF THE EVIDENCE
09:58AM 12 PRESENTED BY THE GOVERNMENT IN THEIR CASE-IN-CHIEF.

09:59AM 13 THE COURT: LET ME JUST ASK: DO ALL THREE OF YOU
09:59AM 14 WANT TO MAKE THAT MOTION?

09:59AM 15 MR. PETRAZIO: I DO, YOUR HONOR.

09:59AM 16 MR. WHALEN: I DO. MINE MAY BE A LITTLE BIT MORE
09:59AM 17 INVOLVED THAN JUST THE GENERAL--

09:59AM 18 THE COURT: THAT'S FINE. I'LL HEAR FROM ALL THREE
09:59AM 19 OF YOU. I THINK WHAT I NEED TO DO IS TAKE A BREAK AND GO
09:59AM 20 THROUGH MY NOTES. I USUALLY DO SOME HIGHLIGHTING OR SOME
09:59AM 21 RED-INK CHECKING, AND THEN I WILL BETTER RECALL THE EVIDENCE
09:59AM 22 WHEN YOU MAKE YOUR MOTION.

09:59AM 23 MR. WHALEN: THANK YOU, YOUR HONOR.

09:59AM 24 THE COURT: OKAY. SO LET'S TAKE A RECESS. GIVE ME,
09:59AM 25 I DON'T KNOW, AT LEAST 15 MINUTES TO GO BACK THROUGH MY NOTES.

09:59AM 1 OKAY. WE'LL RECESS FOR AT LEAST 15 MINUTES. THANK YOU.

09:59AM 2 [RECESS]

10:49AM 3 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

10:49AM 4 THE COURT: THANK YOU. PLEASE BE SEATED.

10:49AM 5 IT SOMETIMES TAKES ME LONGER THAN I THINK TO GO

10:49AM 6 THROUGH MY NOTES, BUT I HAVE DONE THAT. SO LET ME HEAR

10:49AM 7 WHATEVER YOU WANT TO SAY.

10:49AM 8 MR. KEMP, WAS THERE ANYTHING ELSE YOU WANTED TO SAY

10:49AM 9 ON YOUR RULE 29 MOTION?

10:49AM 10 MR. KEMP: NO, YOUR HONOR.

10:49AM 11 THE COURT: OKAY.

10:49AM 12 MR. KEMP: THAT WAS IT.

10:49AM 13 THE COURT: ALL RIGHT.

10:49AM 14 MR. WHALEN?

10:49AM 15 MR. WHALEN: YOUR HONOR, ON BEHALF OF MR. BOWEN,

10:50AM 16 WE WOULD MOVE UNDER RULE 29 FOR A MOTION FOR ACQUITTAL. WE

10:50AM 17 WOULD ARGUE THAT THERE HAS NOT BEEN ANY PROOF OF ANY AGREEMENT

10:50AM 18 BETWEEN MR. BOWEN AND ANYONE ELSE WITH THE INTENT TO DISTRIBUTE

10:50AM 19 METHAMPHETAMINE.

10:50AM 20 BY WAY OF ASSISTANCE, I DIRECT THE COURT TO UNITED

10:50AM 21 STATES VERSUS HOLLOWAY. IT IS A--THE CITE--IT'S AN UNPUBLISHED

10:50AM 22 OPINION, BUT I THINK IT'S VERY HELPFUL, BECAUSE IT LAYS OUT ALL

10:50AM 23 THE FACTORS OF ANALYZING A CONSPIRACY CASE THAT I THINK ARE

10:50AM 24 PERTINENT TO HEAR. THE CITE IS 377 F.APP'X 383. IT TALKS

10:50AM 25 ABOUT ALL THE DIFFERENT CONCEPTS, THE DIFFERENT ELEMENTS, AND

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10:50AM 1 HOW MERE PRESENCE OR ASSOCIATION ALONE ARE NOT SUFFICIENT. BUT
10:50AM 2 IN THAT PARTICULAR CASE, THEY TALK ABOUT, YOU KNOW, THERE'S THE
10:50AM 3 BUYER/SELLER EXCEPTION THAT IF IT'S JUST A BUY/SELL AGREEMENT,
10:51AM 4 THEN THERE MAY NOT BE PROOF OF A CONSPIRACY. AND ONE OF THE
10:51AM 5 THINGS THEY LOOK AT AS AN EXAMPLE IS THAT EVIDENCE THAT A
10:51AM 6 DEFENDANT PURCHASED DRUGS ON CONSIGNMENT WOULD PROVIDE STRONG
10:51AM 7 EVIDENCE OF MEMBERSHIP IN A CONSPIRACY BECAUSE IT INDICATES
10:51AM 8 A STRONG LEVEL OF TRUST IN AN ONGOING MUTUALLY DEPENDENT
10:51AM 9 RELATIONSHIP. AND IN THAT PARTICULAR CASE THEY DIDN'T FIND
10:51AM 10 THAT.

10:51AM 11 I THINK IN THIS PARTICULAR CASE THERE IS NO EVIDENCE
10:51AM 12 PRESENTED ON BEHALF OF MR.--AS IT RELATES TO MR. BOWEN AS IT
10:51AM 13 RELATES TO ANY DRUGS THAT WERE PLACED ON CONSIGNMENT. I THINK
10:51AM 14 THE TESTIMONY--THE ONLY TESTIMONY THAT YOU HAVE IS FROM
10:51AM 15 MR. PERALES. HE NEVER SAID HE FRONTED ANY DRUGS TO MR. BOWEN.
10:51AM 16 I THINK MR. TIBBS AND ANYBODY ELSE WHO SAID THEY HAD ANY
10:51AM 17 ASSOCIATION WITH MR. BOWEN SAID THAT THE DRUGS WERE ALWAYS PAID
10:51AM 18 FOR AND THEY WERE NEVER FRONTED. SO I THINK THAT IS A FACTOR
10:52AM 19 THE COURT SHOULD LOOK AT AS FAR AS IT RELATES TO WHETHER OR NOT
10:52AM 20 THERE WAS AN AGREEMENT, BECAUSE THERE WAS NO DRUGS PLACED ON
10:52AM 21 CONSIGNMENT.

10:52AM 22 ALSO, THEY DID MENTION IN THAT CASE IF EACH PARTY
10:52AM 23 HAS A STAKE IN THE SUCCESS OF THE OTHER'S BUSINESS, SUGGESTING
10:52AM 24 A SUBSTANTIAL DEGREE OF COOPERATION AND PARTNERSHIP RATHER THAN
10:52AM 25 A SERIES OF ISOLATED AND SPORADIC TRANSACTIONS. I DON'T THINK

10:52AM 1 THERE'S ANY TESTIMONY FROM MR. PERALES, WHO IS THE ALLEGED
10:52AM 2 SOURCE, THAT HE AND MR. BOWEN HAD ANY TYPE OF PARTNERSHIP
10:52AM 3 AND WERE DEPENDENT ON EACH OTHER FOR THEIR SUCCESS. I THINK
10:52AM 4 THAT WAS NOT STATED ON THE RECORD.

10:52AM 5 ALSO, THERE WASN'T ANY TESTIMONY FROM MR. PERALES
10:52AM 6 THAT THERE WAS ANY EVIDENCE THAT HE KNEW THAT THE DRUGS THAT
10:52AM 7 HE WAS GIVING MR. BOWEN WERE GOING TO BE RESOLD. ONCE THEY
10:52AM 8 WERE SOLD, HE DIDN'T HAVE ANY INTEREST IN WHAT HAPPENED TO THEM
10:52AM 9 AFTER THAT BECAUSE HE WAS PAID FOR THEM. THEY HAD BEEN PAID.

10:53AM 10 AND ALSO I THINK THE EVIDENCE SHOWS THAT, YOU KNOW,
10:53AM 11 AS THIS SO-CALLED MASSIVE GROUP OF PEOPLE IS BEHAVING IN
10:53AM 12 A CERTAIN WAY, THAT ALL OF A SUDDEN MR. BOWEN'S NAME THEN
10:53AM 13 APPEARS SOMETIME IN 2011. AND AS RELATES TO THAT, YOU HAVE
10:53AM 14 MR. TIBBS, MS. DAVILA, MR. CABRALES TALKING ABOUT HOW HE MAY
10:53AM 15 HAVE BEEN INVOLVED IN JUNE OR JULY OF 2011, THAT THEY WERE
10:53AM 16 GOING DOWN TO DUNCANVILLE OR GOING TO DALLAS TO GET DRUGS FROM
10:53AM 17 MR. PERALES. BUT YOU THEN HAD MS. KISHA BOWEN COME IN AND
10:53AM 18 STATE THAT SHE DIDN'T MAKE THIS INTRODUCTION UNTIL SEPTEMBER OF
10:53AM 19 2011. SO YOU HAVE ALL THAT INCONSISTENT TESTIMONY ABOUT WHEN
10:53AM 20 HIS INVOLVEMENT OCCURRED.

10:53AM 21 YOU HAD MR. HOUSE, WHO TRIED TO IMPLICATE MR. BOWEN
10:54AM 22 BY SAYING HE--THAT MR. SALAZAR TOLD HIM THAT HE WAS HAVING
10:54AM 23 TROUBLE WITH MR. BOWEN. BUT THEN WHEN YOU LISTEN TO KISHA'S
10:54AM 24 TESTIMONY, SHE DIDN'T MAKE THIS ALLEGED INTRODUCTION UNTIL
10:54AM 25 AUGUST OF 2011. WE ALL KNOW BY THE TESTIMONY THAT THEN

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10:54AM 1 MR. SALAZAR IS IN CUSTODY BY THAT TIME AND MR. HOUSE DIDN'T
10:54AM 2 HAVE ANY DEALINGS WITH MR. BOWEN.

10:54AM 3 SO THEN YOU GET TO THE FALL OF 2011. YOU HAVE
10:54AM 4 MR. TIBBS, WHO CLAIMS THAT THEY POOLED THEIR MONEY TOGETHER.
10:54AM 5 BUT I THINK THE ISSUE THERE IS THEN THEY WOULD SEPARATE IT OUT
10:54AM 6 AND THEN THEY WENT THEIR OWN WAYS, THAT NEITHER ONE OF THEM WAS
10:54AM 7 MUTUALLY DEPENDENT ON EACH OTHER FOR THEIR SUCCESS. ONE WASN'T
10:54AM 8 DEPENDING ON THE OTHER TO MAKE A PROFIT. THEY WEREN'T SPLITTING
10:54AM 9 PROFITS. THERE WASN'T ANY EVIDENCE THAT THERE WAS ANY
10:54AM 10 SPLITTING OF ANY TYPE OF PROFIT.

10:54AM 11 AND THEN I WOULD SIMPLY END THAT, YOU KNOW, THE CASE
10:54AM 12 AGAINST MR. BOWEN SIMPLY RESTS ON CODEFENDANT TESTIMONY ALONE.
10:55AM 13 YOU HAVE NO SURVEILLANCE, YOU HAVE NO TRAFFIC STOPS, YOU HAVE
10:55AM 14 NO SEARCH WARRANTS, YOU HAVE NO WIRETAPS, YOU HAVE NO RECORDED
10:55AM 15 PHONE CONVERSATIONS, NO DRUG SEIZURES, YOU HAVE NO PHYSICAL
10:55AM 16 EVIDENCE OR ANY INVESTIGATIVE TECHNIQUES THAT WERE UTILIZED TO
10:55AM 17 CORROBORATE ANY OF THIS TESTIMONY. MY UNDERSTANDING IS, IF
10:55AM 18 YOU LISTENED TO THE EVIDENCE, THAT MR. MATA AND THE DEA GETS
10:55AM 19 INVOLVED IN NOVEMBER OF 2011 AND THEN MR. BOWEN IS INDICTED IN
10:55AM 20 JANUARY OF 2012.

10:55AM 21 SO I THINK WHEN YOU LOOK AT THE WHOLE RECORD ON ITS
10:55AM 22 FACE AND LOOK AT THE ELEMENTS THEY NEEDED TO PROVE, YOUR HONOR,
10:55AM 23 THERE'S SIMPLY NO EVIDENCE THAT THERE WAS ANY SORT OF AN
10:55AM 24 AGREEMENT THAT MR. BOWEN ENTERED INTO OR INTENDED TO FURTHER
10:55AM 25 IT.

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10:55AM 1 AND THEN, FINALLY, I WOULD ARGUE THAT THEY HAVE PLED
10:55AM 2 THIS CASE AS THIS SINGLE OVERARCHING CONSPIRACY, BUT, FRANKLY,
10:55AM 3 I THINK THEY'VE PROVEN SEVERAL ISOLATED CONSPIRACIES.

10:55AM 4 YOU HAD MR. NGUYEN, MR. CAMACHO AND THAT WHOLE LINE
10:56AM 5 OF PEOPLE.

10:56AM 6 THEN YOU HEAR THAT MR. SALAZAR GOES TO JAIL, SO
10:56AM 7 MR. QUIROLO STARTS DOING HIS OWN THING.

10:56AM 8 THEN CHRISTINA HOUSE AND KISHA BOWEN ARE STARTING TO
10:56AM 9 DO THEIR OWN THING.

10:56AM 10 AND THEN YOU HAVE TREY TIBBS, WHO IS JUST ALL OVER
10:56AM 11 THE MAP DOING HIS OWN THING WHEREVER HE CAN SO HE CAN SUPPORT
10:56AM 12 HIS DRUG HABIT.

10:56AM 13 SO I THINK WHEN YOU LOOK AT IT ALL, THEY'VE PROVEN
10:56AM 14 MAYBE A POSSIBILITY OF MULTIPLE CONSPIRACIES, BUT AS THEY HAVE
10:56AM 15 CHARGED IT WITH ONE SINGLE AGREEMENT AND FURTHERANCE OF THAT
10:56AM 16 AGREEMENT, THEY HAVEN'T DONE THAT. AND WE ASK FOR AN
10:56AM 17 ACQUITTAL.

10:56AM 18 THE COURT: OKAY. WHILE YOU ARE AT THE PODIUM, YOU
10:56AM 19 MENTIONED THE TESTIMONY OF FERNANDO PERALES. I'LL GO THROUGH
10:56AM 20 THAT. AND YOU'VE CITED THE HOLLOWAY CASE FOR THE PROPOSITION
10:56AM 21 THAT SIMPLY A BUY/SELL ARRANGEMENT IS NOT EVIDENCE--AN
10:56AM 22 ARRANGEMENT BETWEEN A BUYER AND A SELLER IS NOT NECESSARILY
10:56AM 23 EVIDENCE OF A CONSPIRACY; HOWEVER, FRONTING DRUGS, FOR EXAMPLE,
10:57AM 24 OR DRUGS GIVEN TO SOMEONE ON CONSIGNMENT MAY INDICATE A
10:57AM 25 COOPERATIVE ARRANGEMENT.

10:57AM 1 JUST LOOKING THROUGH MY NOTES ON THE TESTIMONY--
10:57AM 2 AND I CAN'T WRITE DOWN EVERYTHING--FERNANDO PERALES DID
10:57AM 3 IDENTIFY MR. BOWEN IN OPEN COURT AND TESTIFIED THAT HE SOLD
10:57AM 4 DRUGS--METHAMPHETAMINE--TO MR. BOWEN. HE TESTIFIED THAT TREY
10:57AM 5 TIBBS WAS ONE OF--WAS WITH MR. BOWEN, AND THAT BOWEN AND TIBBS
10:57AM 6 TOGETHER WOULD PICK UP 10 OUNCES, AND THAT PERALES BEGAN
10:57AM 7 SELLING TO TIMOTHY BOWEN IN 2011, AND HE DELIVERED DRUGS TO
10:57AM 8 TIMOTHY BOWEN.

10:57AM 9 THEN WE HEARD THE TESTIMONY OF KENNETH HOUSE, WHO
10:57AM 10 TESTIFIED THAT MR. SALAZAR SAID HE WAS SELLING DRUGS TO TIMOTHY
10:58AM 11 BOWEN. MR. HOUSE IDENTIFIED MR. BOWEN HERE IN THE COURTROOM.

10:58AM 12 THEN TREY TIBBS TESTIFIED, REGARDING BOWEN, THAT
10:58AM 13 HE MET TIMOTHY BOWEN. HE IDENTIFIED HIM HERE IN THE COURTROOM.
10:58AM 14 ACCORDING TO TIBBS, MR. BOWEN TOLD TIBBS THAT PERALES WAS
10:58AM 15 BOWEN'S SUPPLIER. AND I BELIEVE TREY TIBBS TESTIFIED THAT
10:58AM 16 HE AND MR. BOWEN DECIDED TO POOL THEIR MONEY AND BUY A LARGER
10:58AM 17 QUANTITY TOGETHER FROM PERALES. IS THAT NOT CORRECT? IS THAT
10:58AM 18 YOUR RECOLLECTION?

10:58AM 19 MR. WHALEN: I DON'T KNOW ABOUT THE LARGER QUANTITY,
10:58AM 20 BUT MY RECOLLECTION IS THEY DID POOL THEIR MONEY TOGETHER. AND
10:58AM 21 THERE WAS TESTIMONY THAT THEY GOT A BETTER PRICE AS A RESULT OF
10:58AM 22 THAT. OR TIBBS WAS GETTING A BETTER PRICE. I WOULD AGREE WITH
10:59AM 23 THAT.

10:59AM 24 THE COURT: OKAY. WELL, POOLING YOUR MONEY IS
10:59AM 25 WORKING COOPERATIVELY. AND THAT WAS THE TESTIMONY OF TREY

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10:59AM 1 TIBBS.

10:59AM 2 THERE WAS ALSO THE TESTIMONY OF MARIE DAVILA. AND
10:59AM 3 SHE TESTIFIED THAT SHE WENT WITH JOSH BOWEN TO HIS BROTHER,
10:59AM 4 TIM BOWEN'S, HOUSE TO GET METHAMPHETAMINE FROM TIM BOWEN. SHE
10:59AM 5 IDENTIFIED TIM BOWEN HERE IN THE COURTROOM. SHE SAID SHE MET
10:59AM 6 WITH TIM BOWEN TO GET A BETTER DEAL ON METHAMPHETAMINE. AND
10:59AM 7 SHE STARTED DRIVING FOR TIM BOWEN IN MID-JUNE OF 2011 TO GO
10:59AM 8 PICK UP DRUGS. AND TIM BOWEN PAID HER A HUNDRED DOLLARS EACH
10:59AM 9 TIME, AND A GRAM OF METHAMPHETAMINE. NOW, THAT IS A COOPERATIVE
10:59AM 10 WORKING RELATIONSHIP. THAT INDICATES--THAT'S EVIDENCE OF A
11:00AM 11 CONSPIRACY. SHE HAD OTHER TESTIMONY. FOR EXAMPLE, SHE
11:00AM 12 TESTIFIED SHE HEARD TIM BOWEN COMPLAINING TO DOGG, WHO IS
11:00AM 13 FERNANDO PERALES, ABOUT THE PRICE OF METHAMPHETAMINE THAT
11:00AM 14 PERALES WAS CHARGING TIM BOWEN.

11:00AM 15 WE HEARD FROM CARLOS CABRALES, WHO IDENTIFIED TIM
11:00AM 16 BOWEN HERE IN THE COURTROOM. HE SAID THAT HE GOT PAID WITH
11:00AM 17 METHAMPHETAMINE TO ALLOW HIS CAR TO BE USED BY MARIE DAVILA
11:00AM 18 AND TIM BOWEN. AGAIN, I THINK THAT'S EVIDENCE OF A CONSPIRACY.
11:00AM 19 THAT'S A WORKING RELATIONSHIP, CABRALES ALLOWING HIS CAR TO
11:00AM 20 BE USED, AND IN RETURN BOWEN PAYS HIM OFF WITH METH.

11:01AM 21 SO I DON'T KNOW IF THERE'S OTHER TESTIMONY THAT
11:01AM 22 MS. BATSON OR MR. GONZALEZ WANTS TO POINT OUT TO THE COURT
11:01AM 23 ABOUT TIM BOWEN.

11:01AM 24 MS. BATSON: YOUR HONOR, WITH THE TESTIMONY THAT
11:01AM 25 THE COURT HAS ALREADY GONE OVER, MS. DAVILA ALSO TESTIFIED THAT

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11:01AM 1 THEY RENTED CARS, AND SO DID CARLOS CABRALES, IN ORDER FOR THEM
11:01AM 2 TO DRIVE DOWN THERE TO MEET DOGG TO OBTAIN THE METHAMPHETAMINE.

11:01AM 3 BUT THEN KISHA BOWEN ALSO TESTIFIED THAT TIM BOWEN
11:01AM 4 WAS HER BROTHER-IN-LAW. AND SHE IS THE ONE WHO INITIALLY
11:01AM 5 INTRODUCED TIM BOWEN TO DEFENDANT SALAZAR IN ORDER FOR THEM TO
11:01AM 6 START DISTRIBUTING DRUGS TO EACH OTHER. WHEN MR. SALAZAR WENT
11:01AM 7 TO JAIL, HE STARTED GOING TO DOGG. AND CHRISTINA HOUSE ALSO
11:01AM 8 MADE THAT INTRODUCTION. AND CHRISTINA HOUSE ALSO CORROBORATED
11:01AM 9 THAT.

11:01AM 10 THE COURT: ALL RIGHT.

11:02AM 11 MR. WHALEN, BASED ON THE EVIDENCE I'VE REVIEWED AND
11:02AM 12 WHAT MS. BATSON HAS JUST POINTED OUT, I'M GOING TO DENY YOUR
11:02AM 13 MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29. I THINK THERE
11:02AM 14 IS EVIDENCE OF A COOPERATIVE WORKING RELATIONSHIP BETWEEN
11:02AM 15 MR. BOWEN AND OTHER COCONSPIRATORS IN THIS CASE. AND I LOOK
11:02AM 16 AT THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE GOVERNMENT
11:02AM 17 AT THIS POINT.

11:02AM 18 MR. WHALEN: I UNDERSTAND.

11:02AM 19 THE COURT: LET ME COME BACK TO YOU, MR. KEMP,
11:02AM 20 BEFORE I GO ON.

11:02AM 21 WITH REGARD TO MR. SALAZAR, I'VE GONE THROUGH MY
11:02AM 22 NOTES. ANDY NGUYEN TESTIFIED. HE IDENTIFIED MR. SALAZAR IN
11:02AM 23 COURT--IN OPEN COURT HERE. HE TESTIFIED THAT SALAZAR WENT TO
11:02AM 24 DALLAS TO PICK UP DRUGS.

11:03AM 25 MANUEL URBINA TESTIFIED. HE IDENTIFIED RENE SALAZAR

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11:03AM 1 IN THE COURTROOM. HE SAID THAT SALAZAR WAS WITH MANUEL CAMACHO
11:03AM 2 WHEN CAMACHO PICKED UP METHAMPHETAMINE TO SELL TO SALAZAR.
11:03AM 3 CAMACHO GOT THE METHAMPHETAMINE FROM URBINA, WHO WAS
11:03AM 4 DISTRIBUTING METHAMPHETAMINE RECEIVED FROM ANDY NGUYEN.
11:03AM 5 SO THERE'S EVIDENCE OF A WORKING RELATIONSHIP AMONG URBINA,
11:03AM 6 SALAZAR, CAMACHO AND NGUYEN FROM THE TESTIMONY OF MANUEL
11:03AM 7 URBINA.

11:04AM 8 MANUEL CAMACHO TESTIFIED. HE TESTIFIED THAT HE
11:04AM 9 DISTRIBUTED METHAMPHETAMINE TO SALAZAR, WHO REDISTRIBUTED THE
11:04AM 10 METHAMPHETAMINE IN SHERMAN AND DENISON. HE TESTIFIED ABOUT
11:04AM 11 AMOUNTS. HE TESTIFIED THAT HE DELIVERED METHAMPHETAMINE
11:04AM 12 TO SALAZAR, WHO LIVED ON DAY STREET, I THINK HE SAID. HE
11:04AM 13 TESTIFIED THAT SALAZAR PUT CHARLES QUIROLO IN CHARGE WHEN
11:04AM 14 SALAZAR WAS UNAVAILABLE. THAT'S EVIDENCE OF A COOPERATIVE
11:04AM 15 WORKING RELATIONSHIP AMONG CAMACHO, SALAZAR AND QUIROLO.
11:04AM 16 ALSO, HE TESTIFIED THAT KENNETH HOUSE WAS SALAZAR'S PARTNER.
11:04AM 17 AGAIN, EVIDENCE OF A WORKING RELATIONSHIP IN A CONSPIRACY.
11:05AM 18 HE TESTIFIED THAT TREY TIBBS WORKED FOR KENNETH HOUSE AND
11:05AM 19 THAT HOUSE AND SALAZAR WERE PARTNERS.

11:05AM 20 WE HEARD FROM FERNANDO PERALES, ALSO KNOWN AS DOGG.
11:05AM 21 HE TESTIFIED THAT KENNETH HOUSE TOLD PERALES THAT HOUSE'S
11:05AM 22 PARTNER WAS RENE SALAZAR. PERALES IDENTIFIED SALAZAR IN
11:05AM 23 OPEN COURT. HE TESTIFIED HE SOLD DIRECTLY TO SALAZAR--
11:05AM 24 SOLD METHAMPHETAMINE TO SALAZAR.

11:05AM 25 PRISCILLA CAMACHO MARCELENO TESTIFIED. SHE SAID

11:05AM 1 MANUEL CAMACHO IS HER YOUNGER BROTHER. SHE DROVE
11:05AM 2 METHAMPHETAMINE TO DENISON FOR HER BROTHER. SHE IDENTIFIED
11:06AM 3 RENE SALAZAR IN THE COURTROOM. SHE DELIVERED DRUGS TO SALAZAR.
11:06AM 4 SHE ALSO DELIVERED TO KENNETH HOUSE WHEN SALAZAR WAS PRESENT.
11:06AM 5 THAT'S SOME EVIDENCE THAT SALAZAR AND HOUSE ARE WORKING TOGETHER.

11:06AM 6 BOBBY JOE JAMES TESTIFIED THAT SALAZAR WAS HOUSE'S
11:06AM 7 PARTNER. HE IDENTIFIED RENE SALAZAR HERE IN THE COURTROOM.
11:06AM 8 HE TESTIFIED HE GOT METHAMPHETAMINE FROM SALAZAR AND THAT HE
11:06AM 9 SOLD THE METHAMPHETAMINE HE GOT FROM HOUSE AND SALAZAR. HE
11:06AM 10 TESTIFIED CHARLIE QUIROLO WORKED FOR SALAZAR AND STASHED
11:07AM 11 METHAMPHETAMINE FOR SALAZAR. THAT'S EVIDENCE OF A CONSPIRACY.

11:07AM 12 CHARLES QUIROLO TESTIFIED. HE IDENTIFIED RENE
11:07AM 13 SALAZAR IN OPEN COURT. HE TESTIFIED THAT SALAZAR SOLD
11:07AM 14 METHAMPHETAMINE TO QUIROLO. HE TESTIFIED THAT HE WENT TO
11:07AM 15 SALAZAR'S HOUSE TO BUY THE METHAMPHETAMINE AND THAT HE
11:07AM 16 DELIVERED METHAMPHETAMINE TO SALAZAR'S CUSTOMERS. THAT IS
11:07AM 17 EVIDENCE OF A COOPERATIVE WORKING RELATIONSHIP AND, THEREFORE,
11:07AM 18 A CONSPIRACY. HE TESTIFIED THAT SALAZAR GOT HIS METH FROM
11:07AM 19 MANUEL MIKE CAMACHO. HE ALSO TESTIFIED THAT SALAZAR SUPPORTED
11:07AM 20 KENNETH HOUSE'S WIFE AFTER HOUSE WAS ARRESTED AND THAT SALAZAR
11:07AM 21 HAD TOLD QUIROLO THAT HE SUPPORTED CHRISTINA HOUSE.

11:08AM 22 ANDREA REEVES TESTIFIED THAT SHE'S THE EX-GIRLFRIEND
11:08AM 23 OF RENE SALAZAR. SHE IDENTIFIED SALAZAR IN THE COURTROOM.
11:08AM 24 SHE TESTIFIED SHE LIVED WITH SALAZAR AT 426 WEST DAY STREET
11:08AM 25 IN DENISON AND THAT SALAZAR SOLD METHAMPHETAMINE.

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11:08AM 1 KENNETH HOUSE TESTIFIED THAT SALAZAR WAS
11:08AM 2 DISTRIBUTING DRUGS. HE IDENTIFIED SALAZAR IN THE COURTROOM.
11:08AM 3 HE SAID HE SOLD METHAMPHETAMINE FOR RENE SALAZAR AND THEN HE
11:08AM 4 BECAME A PARTNER WITH SALAZAR. AND FERNANDO PERALES BECAME
11:08AM 5 HOUSE'S SUPPLIER, AND HE WOULD SPLIT THE DRUGS HE BOUGHT WITH
11:08AM 6 SALAZAR. THAT'S EVIDENCE OF A CONSPIRACY. HE SAID HE SHARED
11:09AM 7 DRUGS WITH SALAZAR. HE SAID BOBBY JAMES WOULD DELIVER DRUGS
11:09AM 8 AND PICK UP MONEY FOR KENNETH HOUSE AND RENE SALAZAR. THAT'S
11:09AM 9 EVIDENCE OF A CONSPIRACY. THOSE ARE WORKING RELATIONSHIPS.
11:09AM 10 HE TESTIFIED AND CORROBORATED OTHER TESTIMONY THAT CHARLES
11:09AM 11 QUIROLO SOLD AND STASHED DRUGS FOR RENE SALAZAR.

11:09AM 12 TREY TIBBS IDENTIFIED RENE SALAZAR IN THE COURTROOM.
11:09AM 13 HE TESTIFIED MANUEL CAMACHO SUPPLIED KENNETH HOUSE AND RENE
11:09AM 14 SALAZAR. HE TESTIFIED THAT HE BOUGHT METHAMPHETAMINE FROM
11:10AM 15 SALAZAR AT THE HOUSE ON DAY STREET WHERE SALAZAR LIVED.
11:10AM 16 HE TESTIFIED THAT SALAZAR LIVED WITH ANDREA REEVES.

11:10AM 17 KISHA BOWEN TESTIFIED. LET'S SEE. SHE IDENTIFIED
11:10AM 18 RENE SALAZAR IN THE COURTROOM. SHE TESTIFIED THAT WHEN HER
11:10AM 19 HUSBAND, MELVIN BOWEN, WENT TO JAIL--MELVIN BEING TIM BOWEN'S
11:10AM 20 BROTHER--THAT RENE SALAZAR TOLD HER THAT MELVIN OWED HIM
11:10AM 21 \$298 AND SALAZAR TOLD HER THAT SHE COULD WORK OFF THE DEBT
11:11AM 22 BY PICKING UP METHAMPHETAMINE AND DELIVERING METHAMPHETAMINE
11:11AM 23 FOR HIM. SHE DID SO. THAT'S EVIDENCE OF A CONSPIRACY.
11:11AM 24 SHE TESTIFIED SHE DID THAT THREE TIMES.

11:11AM 25 SO YOUR MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE

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11:11AM 1 29 IS DENIED. I THINK THERE IS EVIDENCE IN THE RECORD FROM
11:11AM 2 WHICH A REASONABLE JURY COULD FIND RENE SALAZAR GUILTY.

11:11AM 3 MR. KEMP: THANK YOU, YOUR HONOR.

11:11AM 4 THE COURT: MR. PETRAZIO?

11:11AM 5 MR. PETRAZIO: THANK YOU, YOUR HONOR.

11:11AM 6 JUAN CARLOS VEGA MOVES THIS COURT, PURSUANT TO RULE
11:11AM 7 29, FOR A JUDGMENT OF ACQUITTAL. YOUR HONOR, AS YOU ARE AWARE,
11:11AM 8 WE'VE HAD ONE WITNESS IN THIS CASE, ASIDE FROM THE CASE AGENT,
11:12AM 9 THAT TESTIFIED CONCERNING MR. VEGA'S ALLEGED INVOLVEMENT IN
11:12AM 10 THIS CASE. THE COCONSPIRATOR THAT'S ALLEGED MR. VEGA IS
11:12AM 11 INVOLVED, AS YOU ARE AWARE, IS RAMIRO CAZARES. MR. CAZARES
11:12AM 12 WAS ARRESTED ON APRIL 9TH OF 2012. AFTER HE WAS ARRESTED,
11:12AM 13 I SUSPECT THAT THE GOVERNMENT TOLD HIM THAT IF HE COOPERATED
11:12AM 14 AND PROVIDED SUBSTANTIAL ASSISTANCE IN GIVING NAMES OF OTHER
11:12AM 15 INDIVIDUALS, THAT THAT MIGHT ASSIST HIM IN HIS CASE. ON THAT
11:12AM 16 SAME DAY, A TELEPHONE CALL WAS MADE TO MR. VEGA BY RAMIRO
11:12AM 17 CAZARES. AND MR. MATA TESTIFIED THAT HE WAS PRESENT DURING
11:12AM 18 THAT CALL, ALBEIT MR. VEGA WAS NOT AWARE THAT THERE WAS SOMEONE
11:12AM 19 ELSE LISTENING IN. DURING THIS CALL THAT OBVIOUSLY MR. VEGA
11:13AM 20 HAS NO IDEA IS BEING RECORDED, SOME DISCUSSION WAS HAD.
11:13AM 21 WHETHER THAT RISES TO THE LEVEL OF A CONSPIRACY, WE DON'T
11:13AM 22 BELIEVE HAS BEEN ESTABLISHED. MR. VEGA WAS ARRESTED ON THE
11:13AM 23 VERY SAME DAY. HE WAS GIVEN AN ADDRESS BY MR. CAZARES. THE
11:13AM 24 AGENTS WENT TO THAT HOUSE WITHOUT A SEARCH WARRANT, GOT CONSENT
11:13AM 25 TO SEARCH, AND FOUND NOTHING. THE TESTIMONY IS THAT THERE WERE

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11:13AM 1 NO PHOTOGRAPHS TAKEN AT THAT HOUSE. THERE WAS A CAR SEIZED
11:13AM 2 FROM THE PARKING LOT OF THAT HOUSE THAT WAS REGISTERED TO
11:13AM 3 RAMIRO CAZARES, THE BLACK HONDA ACCORD THAT HAD A TRAP IN IT.
11:13AM 4 THERE'S NO EVIDENCE BEFORE THE COURT THAT MR. VEGA KNEW THERE
11:13AM 5 WAS A TRAP IN THAT CAR.

11:13AM 6 THE TESTIMONY OF MR. RAMIRO CAZARES IS THAT HE HAD
11:13AM 7 A ROMANTIC RELATIONSHIP WITH AN INDIVIDUAL BY THE NAME OF
11:13AM 8 YOLANDA DIVA IN MEXICO AND THAT MS. DIVA CALLED HIM AND
11:13AM 9 TESTIFIED--OR CALLED HIM AND SAID, "CAN YOU HELP ME OUT? MY
11:14AM 10 BROTHER IS IN DANGER. I NEED YOU TO DO ME A FAVOR TO PROTECT
11:14AM 11 HIM." THAT WAS THE TESTIMONY THAT HE GAVE, THAT HE HAD REACHED
11:14AM 12 SOME SORT OF AGREEMENT WITH HIS GIRLFRIEND IN MEXICO TO DO HER
11:14AM 13 A FAVOR, AND THAT'S HOW HE BECAME INVOLVED IN THIS CASE.
11:14AM 14 THERE'S NO TESTIMONY THAT HE TOLD MR. VEGA ABOUT THAT AGREEMENT.
11:14AM 15 THERE'S NO TESTIMONY THAT--THE TESTIMONY THAT HE DID GIVE WAS
11:14AM 16 THAT HE AGREED TO DO FIVE FAVORS. AND AT SOME POINT, WE GO
11:14AM 17 THROUGH AND THE TESTIMONY IS THERE THAT HE DOES THREE--HE GOES
11:14AM 18 THROUGH AND HE MAKES THREE MONEY PICKUPS BY HIMSELF. THEN HE
11:14AM 19 DOES TWO DRUG PICKUPS BY HIMSELF. THIS IS MR. RAMIRO CAZARES.
11:14AM 20 AND THEN BEFORE WE GET TO THE LAST DRUG PICKUP, THE GOVERNMENT
11:15AM 21 ASKS HIM IF HE KNOWS JUAN CARLOS VEGA. THAT'S WHERE HE'S
11:15AM 22 BROUGHT INTO THIS DISCUSSION ON DIRECT.

11:15AM 23 THE TESTIMONY IS, "YEAH, HE'S SOMEONE WHO WORKS
11:15AM 24 FOR ME. HE'S WORKED FOR ME FOR SIX OR SEVEN YEARS. I HAVE
11:15AM 25 A REMODELING BUSINESS." WE DIDN'T CONTROVERT THAT TESTIMONY.

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11:15AM 1 THAT'S HOW MR. VEGA KNOWS RAMIRO CAZARES. HE'S HIS WORKER.

11:15AM 2 THEN HE GOES ON TO SAY, WITHOUT EXPLANATION, WITHOUT
11:15AM 3 ANY SORT OF LAYING THE FOUNDATION THAT MR. VEGA KNEW ANYTHING
11:15AM 4 ABOUT HIS DRUG TRANSACTIONS, THAT HE LEFT THE WORK SITE WITH
11:15AM 5 MR. VEGA, NOT CLEAR WHETHER IN ONE OR TWO CARS, AND GOES TO
11:15AM 6 PICK UP DRUGS. AND WE DON'T EVEN KNOW THAT--AND MR. CAZARES
11:15AM 7 DIDN'T TESTIFY AT ANY POINT PRIOR TO THIS THAT HE INFORMED
11:15AM 8 MR. VEGA ABOUT HIS INVOLVEMENT IN THIS--IN THIS RUNNING DRUGS.
11:15AM 9 AND WHAT'S CURIOUS IS THIS IS THE LAST TIME THAT THEY--THAT
11:16AM 10 MR. CAZARES HAS AN AGREEMENT WITH PRIMO TO PICK UP DRUGS. AND
11:16AM 11 NOW HE'S INVOLVED HIS FRIEND AND HIS WORKER, MR. VEGA, IN THAT
11:16AM 12 TIME. THERE'S NO SURVEILLANCE OF THAT, THERE'S NO PICTURES OF
11:16AM 13 THAT, THERE'S NO EVIDENCE OTHER THAN MR. RAMIRO CAZARES SAYING,
11:16AM 14 "HE WENT WITH ME ON THIS TIME," WITHOUT EXPLAINING WHY ON THE
11:16AM 15 EIGHT OR NINE PREVIOUS TIMES THAT HE'S INVOLVED THAT HE NEVER
11:16AM 16 TAKES ANYONE, LET ALONE MR. VEGA. IT JUST SO HAPPENS THIS LAST
11:16AM 17 TIME.

11:16AM 18 AND THEN THERE'S TESTIMONY FROM RAMIRO CAZARES
11:16AM 19 THAT THEY TOOK THE DRUGS TO MR. VEGA'S APARTMENT WITHOUT
11:16AM 20 AN EXPLANATION AS TO WHY THEY DID THAT, AND THEN THEY TOOK
11:16AM 21 THEM--WHAT HE SAYS IS, "WE LOOKED AT THEM. WE OPENED THEM UP
11:16AM 22 AND WE LOOKED AT THEM TO SEE WHAT--WE JUST LOOKED AT THEM,
11:16AM 23 AND THEN WE TOOK THEM AND WE LEFT AND WE WENT TO BLANCA
11:16AM 24 CAZARES'S," HIS EX-WIFE'S HOUSE, WHERE MR. CAZARES SAYS HE PUT
11:17AM 25 THEM IN A CLOSET IN A BASKET AND THAT'S WHERE THEY WENT. HE

11:17AM 1 WAS JUST GONNA LEAVE THEM THERE FOR A FEW DAYS.

11:17AM 2 JUDGE, AT THAT POINT THEY GET A WARRANT TO SEARCH
11:17AM 3 THAT HOUSE, THE DRUGS ARE FOUND. THERE'S NO--AND THEN THEY
11:17AM 4 PLAY THE RECORDING ABOUT COOKING. HE DIDN'T TESTIFY THAT THEY
11:17AM 5 HAD EVER DONE THIS BEFORE. I THINK HIS TESTIMONY WAS, "I
11:17AM 6 TALKED TO PRIMO AND MR. VEGA--THERE WAS AN OPEN LINE. HE HEARD
11:17AM 7 EVERYTHING. AND HE TAUGHT US HOW TO COOK, AND WE TRIED IT AND
11:17AM 8 IT DIDN'T WORK."

11:17AM 9 THERE'S NO EVIDENCE BEFORE THE COURT THAT THERE WAS
11:17AM 10 AN AGREEMENT FOR MR. VEGA TO PARTICIPATE IN ANY CONSPIRACY. HE
11:17AM 11 KNEW NO ONE IN THE CASE OTHER THAN RAMIRO CAZARES. AND TO SAY
11:17AM 12 NOW THAT THEY'RE LINKED UP TO--WE DON'T KNOW WHO PRIMO IS. WE
11:17AM 13 DO KNOW THAT THE GOVERNMENT HAS HIS PHONE NUMBER BECAUSE THEY
11:18AM 14 PLACED A CALL TO HIM. BUT OTHER THAN THAT, THERE'S NO OTHER
11:18AM 15 BUYS THAT WERE SET UP WITH PRIMO.

11:18AM 16 THE COURT: YOU ARE SAYING MR. VEGA DIDN'T KNOW WHO
11:18AM 17 PRIMO WAS?

11:18AM 18 MR. PETRAZIO: I'M SAYING THAT THE PERSON THAT HAD
11:18AM 19 ALL THE CONTACT WITH PRIMO WAS MR. CAZARES. HE TESTIFIED THAT
11:18AM 20 SOMEBODY MET HIM AND GAVE HIM A PHONE. HE ALSO TESTIFIED THAT
11:18AM 21 HE HAD THE NUMBER FOR PRIMO, THAT MR. CAZARES HAD THE NUMBER
11:18AM 22 FOR PRIMO.

11:18AM 23 THE COURT: OKAY. BUT I HAVE IN MY NOTES THAT
11:18AM 24 AGENT MATA TESTIFIED THAT UPON ARREST MR. VEGA GAVE A VOLUNTARY
11:18AM 25 STATEMENT AND SAID HE KNEW CAZARES'S SOURCE OF DRUGS WAS PRIMO.

11:18AM 1 MR. PETRAZIO: I UNDERSTAND.

11:18AM 2 THE COURT: THAT'S WHAT I WROTE DOWN.

11:18AM 3 MR. PETRAZIO: I UNDERSTAND THAT, YOUR HONOR. AND
11:18AM 4 I ASKED MR. MATA WHY, WITH ALL THE TECHNOLOGY THAT WE HAVE,
11:18AM 5 THAT A STATEMENT OR A CONFESSION IS ALLEGEDLY MADE BY MR. VEGA,
11:19AM 6 THERE'S NO RECORDING OF IT. I MEAN, WHY THAT HAPPENED IS
11:19AM 7 BEYOND ME.

11:19AM 8 WHAT DID HAPPEN, THOUGH--AND I DON'T KNOW WHETHER
11:19AM 9 HIS RECORDER--ON THE SAME DAY THAT MR. VEGA ALLEGEDLY GAVE HIS
11:19AM 10 CONFESSION, HE RECORDED THE PHONE CALL. IT ALL HAPPENED ON THE
11:19AM 11 SAME DAY. SO HE HAS SOME SORT OF RECORDING DEVICE. WHY HE
11:19AM 12 WOULDN'T RECORD SOME ALLEGED CONFESSION, WE DON'T HAVE IT.
11:19AM 13 WHAT WE DO HAVE IS THE AGENT'S CASE REPORT SAYING THAT HE
11:19AM 14 SAID ALL THIS. THAT'S WHAT WE HAVE. WE DON'T HAVE ANY
11:19AM 15 DIRECT EVIDENCE, A RECORDING OF A CONFESSION, A RECORDING OF
11:19AM 16 A STATEMENT OR ANYTHING LIKE THAT. ANYTHING SIGNED. I THINK
11:19AM 17 YOU NEED MORE EVIDENCE OTHER THAN WHAT'S PURPORTEDLY SAID BY A
11:19AM 18 DEFENDANT TO ESTABLISH THEIR ROLE IN A CONSPIRACY. THERE WERE
11:19AM 19 NO OTHER WITNESSES. WE HAVE ONE PERSON. AND THAT ONE PERSON,
11:20AM 20 ON THE SAME DAY HE'S ARRESTED, MAKES A PHONE CALL THAT'S
11:20AM 21 RECORDED BY THE AGENT. NOW HE'S CONNECTED TO HIM WHEN HE'S
11:20AM 22 DONE NINE DEALS BY HIMSELF, AND THEN ON THIS LAST TIME NOW
11:20AM 23 MR. VEGA SUPPOSEDLY WENT WITH HIM. HE NEEDED TO TURN OVER
11:20AM 24 SOMEBODY. HE DIDN'T HAVE ANYONE BECAUSE HE DIDN'T THINK THAT
11:20AM 25 HIS EX-WIFE OR MS. DAVILA KNEW ABOUT THE DRUGS. HE TESTIFIED

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11:20AM 1 TO THAT. THAT WAS HIS TESTIMONY. SO HE ONLY HAS ONE OTHER
11:20AM 2 PERSON, AND IT'S MR. VEGA. AND HE'S BROUGHT IN ON THE DAY
11:20AM 3 THAT NOT ONLY MR. VEGA IS ARRESTED, HE'S BROUGHT INTO THIS
11:20AM 4 CASE--HE'S NOT EVEN ON THE GOVERNMENT'S RADAR UNTIL MR. CAZARES
11:20AM 5 BRINGS UP HIS NAME. THEY MAKE A RECORDED TELEPHONE CALL, HE
11:20AM 6 GETS ARRESTED ON THE SAME DAY, ON THE LAST DAY THAT ANYONE IN
11:20AM 7 THIS CASE IS ARRESTED. AS YOU ARE AWARE, MR. VEGA IS NUMBER
11:20AM 8 34 IN THIS CASE. HE'S IT. THEY STOPPED. AND ON THE LAST DAY
11:20AM 9 THEY GIVE HIM SOMEBODY ELSE. AND THAT'S WHAT THE EVIDENCE IS.
11:21AM 10 NONE OF THESE WITNESSES THAT TOOK THE STAND EVER SAID ANYTHING.
11:21AM 11 EVERY TIME I HAD TO STAND UP AND SAY, "NO QUESTIONS," BECAUSE
11:21AM 12 THEY DON'T KNOW WHO HE IS. SO WE HAVE ONE PERSON. AND SO FOR
11:21AM 13 THAT REASON WE RESPECTFULLY MOVE UNDER RULE 29.

11:21AM 14 THE COURT: OKAY. THANK YOU, MR. PETRAZIO.

11:21AM 15 MS. BATSON OR MR. GONZALEZ?

11:21AM 16 MS. BATSON: DOES THE COURT HAVE THE TRANSCRIPT OF
11:21AM 17 MR. CAZARES'S TESTIMONY?

11:21AM 18 THE COURT: THE TRANSCRIPT? OH, YES, AS A MATTER
11:21AM 19 OF FACT, I DO.

11:21AM 20 LET ME TELL YOU WHAT I WROTE DOWN FIRST. LET'S SEE.
11:21AM 21 HERE'S WHAT I WROTE DOWN ABOUT RAMIRO CAZARES: HE TESTIFIED
11:21AM 22 THAT HE KNEW JUAN CARLOS VEGA. HE IDENTIFIED MR. VEGA IN THE
11:21AM 23 COURTROOM. HE TESTIFIED HE GAVE A PHONE NUMBER TO MR. VEGA AND
11:22AM 24 THAT VEGA TOLD HIM THAT HE PICKED UP SOME MONEY AND DELIVERED
11:22AM 25 IT TO TWO WOMEN. HE TESTIFIED HE CALLED JUAN VEGA. VEGA DROVE

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11:22AM 1 A BLACK HONDA. HE CALLED JUAN VEGA, WHO DROVE A BLACK HONDA,
11:22AM 2 TO MAKE THE PICKUP OF DRUGS. AND HE ALSO TESTIFIED THAT HE AND
11:22AM 3 JUAN VEGA COOKED METHAMPHETAMINE TOGETHER AT THE BRITON COURT
11:22AM 4 HOUSE.

11:22AM 5 WAS THAT IN GRAND PRAIRIE? IS THAT WHERE THAT HOUSE
11:22AM 6 WAS?

11:22AM 7 MS. BATSON: YES, YOUR HONOR.

11:22AM 8 THE COURT: HE ALSO TESTIFIED ABOUT THE RECORDED
11:22AM 9 PHONE CALL TO JUAN VEGA, WHICH IS GOVERNMENT'S EXHIBIT 52.
11:23AM 10 AND I WAS JUST PULLING OUT THAT TRANSCRIPT HERE TO LOOK BACK
11:23AM 11 THROUGH IT. I'M SORRY. YEAH. SO THAT WAS THE TESTIMONY OF
11:23AM 12 RAMIRO CAZARES THAT I HAVE.

11:23AM 13 DID YOU WANT TO POINT OUT MORE TO ME IN THE
11:23AM 14 TRANSCRIPT?

11:23AM 15 MS. BATSON: YOUR HONOR, THERE'S THE TRANSCRIPT OF,
11:23AM 16 ACTUALLY, CAZARES'S TESTIMONY. DO YOU HAVE THAT?

11:23AM 17 THE COURT: YES.

11:23AM 18 MS. BATSON: OKAY. YOUR HONOR, I WAS JUST GOING TO
11:23AM 19 POINT OUT A COUPLE OF THINGS. WHEN MR. CAZARES TESTIFIED--
11:23AM 20 THIS IS ON--WHAT PAGE IS THIS? THIS IS GOING TO BE PAGE 50.
11:23AM 21 HE TESTIFIED THAT THEY DECIDED TO DO IT TOGETHER.

11:23AM 22 THE COURT: ALL RIGHT. LET'S SEE.

11:23AM 23 MS. BATSON: IT'S AT PAGE 50, LINE 9.

11:23AM 24 THE COURT: LET ME GO BACK TO THE QUESTION. OKAY.
11:24AM 25 I THINK THIS WAS DURING MR. PETRAZIO'S EXAMINATION OF THE

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11:24AM 1 WITNESS.

11:24AM 2 MS. BATSON: YES, YOUR HONOR.

11:24AM 3 THE COURT: ALL RIGHT. MR. PETRAZIO ASKED

11:24AM 4 MR. CAZARES, "TELL ME WHO GOT JUAN INVOLVED IN THIS."

11:24AM 5 CAZARES SAID, "I DID."

11:24AM 6 "QUESTION: YOU DID. AND BECAUSE OF YOU, HE'S

11:24AM 7 SITTING HERE. CORRECT?

11:24AM 8 "ANSWER: YES.

11:25AM 9 "AND BECAUSE OF YOU, YOUR EX-WIFE IS IN THIS CASE.

11:25AM 10 CORRECT?"

11:25AM 11 "ANSWER: YES.

11:25AM 12 "YOU WERE THINKING OF YOURSELF. CORRECT?

11:25AM 13 "YES."

11:25AM 14 MR. PETRAZIO SAYS, "AND THAT'S ANOTHER PROBLEM YOU
11:25AM 15 HAVE, ISN'T IT?"

11:25AM 16 "ANSWER: YES. BUT I'M READY TO CHANGE IT."

11:25AM 17 MR. PETRAZIO SAYS, "THAT'S VERY ENCOURAGING, I'M
11:25AM 18 SURE, FOR MR. VEGA AT THIS POINT. IS THAT ENCOURAGING?"

11:25AM 19 "ANSWER: WELL, NO, WE DECIDED TO DO THAT TOGETHER.
11:25AM 20 NO ONE FORCED HIM."

11:25AM 21 IS THAT WHAT YOU WANT ME TO READ?

11:25AM 22 MS. BATSON: YES, YOUR HONOR, THAT'S PART OF IT,
11:25AM 23 THAT THEY WERE DOING IT TOGETHER AND THAT MR. VEGA WASN'T
11:25AM 24 FORCED TO DO IT. THAT'S A PART OF MR. CAZARES'S TESTIMONY.

11:26AM 25 AND THEN ON PAGE 58 MR. CAZARES FURTHER TESTIFIES

11:26AM 1 THAT MR. VEGA WAS GETTING PAID FOR HIS INVOLVEMENT WITH
11:26AM 2 MR. CAZARES AND PRIMO. AND THAT WOULD BE ON PAGE 58, AGAIN
11:26AM 3 AT LINE 9.

11:26AM 4 THE COURT: OKAY. I SEE THAT.

11:26AM 5 MS. BATSON: AND, YOUR HONOR, YOU HAVE THE TRANSCRIPT
11:26AM 6 OF THE RECORDING?

11:26AM 7 THE COURT: YES.

11:26AM 8 MS. BATSON: OKAY. IN THAT RECORDING, YOUR HONOR,
11:26AM 9 JUST TO NOTE, WHEN THE DEFENDANT VEGA IS TALKING TO MR. CAZARES,
11:26AM 10 HE DISCUSSES WITH MR. CAZARES THE FACT THAT THEY'RE THE ONES WHO
11:26AM 11 HID THE BALLS IN THE LAUNDRY BASKET UPSTAIRS IN THE BEDROOM.

11:27AM 12 THE COURT: THE BALLS?

11:27AM 13 MS. BATSON: THE BALLS. THEY WERE LIKE FOOTBALLS.
11:27AM 14 HE SAID THEY WERE SHAPED LIKE AMERICAN FOOTBALLS.

11:27AM 15 THE COURT: OKAY.

11:27AM 16 MS. BATSON: HE SAID THEY HID THOSE UPSTAIRS IN THE
11:27AM 17 UPSTAIRS AT BRITON COURT. AND THEN HE TALKS ABOUT COOKING NOT
11:27AM 18 ONCE BUT TWICE, MR. VEGA DOES. THEN WHEN MR. CAZARES SAYS,
11:27AM 19 "WE NEED TO MOVE THOSE BALLS, BECAUSE MY EX-WIFE FOUND OUT
11:27AM 20 AND SHE'S UPSET," MR. VEGA VOLUNTEERS TO MOVE THE BALLS TO
11:27AM 21 ANOTHER LOCATION.

11:27AM 22 THE COURT: OKAY. COULD I GO THROUGH THIS REAL
11:27AM 23 QUICK? THEN I'LL BE UP TO SPEED WITH YOU.

11:27AM 24 MS. BATSON: YES, YOUR HONOR.

11:28AM 25 THE COURT: OKAY. I SEE IN THE TRANSCRIPT OF THE

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11:28AM 1 RECORDED PHONE CALL WHERE JUAN CARLOS VEGA SAYS TO RAMIRO
11:28AM 2 CAZARES, "ALL RIGHT. WELL, CALL ME, MAN, IN CASE ANYTHING--IF
11:28AM 3 YOU WANT ME TO GO OVER THERE OR SOMETHING. ANYWAY, I'M GONNA
11:28AM 4 SEE IF I CAN DO THE COOKING." RIGHT? IS THAT WHAT YOU ARE
11:29AM 5 REFERRING TO?

11:29AM 6 MS. BATSON: YES. THAT'S ON PAGE 3 OF GOVERNMENT'S
11:29AM 7 EXHIBIT 53.

11:29AM 8 THE COURT: IT'S ON PAGE 2, ALSO.

11:29AM 9 MS. BATSON: 2 AND 3.

11:29AM 10 THE COURT: I'M SORRY. IT'S ON PAGE 3.

11:29AM 11 AND THEN CAZARES MENTIONS PRIMO, HE DOESN'T KNOW
11:29AM 12 WHAT'S GOING ON, HE HASN'T GOTTEN ANY NEWS.

11:29AM 13 MS. BATSON: THEN HE ASKS JUAN CARLOS, "HAVE YOU
11:29AM 14 FOUND OUT ANYTHING?" IN THAT SAME SENTENCE.

11:29AM 15 THE COURT: YEAH.

11:29AM 16 MS. BATSON: SO, CLEARLY, MR. VEGA HAS EQUAL ACCESS
11:29AM 17 TO THE SAME INFORMATION THAT MR. CAZARES DOES. MR. VEGA SAYS
11:30AM 18 THAT THEY HAVEN'T CALLED HIM EITHER.

11:30AM 19 THEN ON PAGE 4 IS THE CONVERSATION ABOUT THE BALLS.

11:30AM 20 THE COURT: YEAH. OKAY. WAS THERE OTHER TESTIMONY
11:30AM 21 ABOUT THE BALLS?

11:30AM 22 MS. BATSON: YES, YOUR HONOR. I BELIEVE THAT AGENT
11:30AM 23 MATA TESTIFIED THAT, AFTER SPEAKING WITH MR. VEGA, MR. VEGA
11:30AM 24 TOLD HIM THAT THEY HAD HIDDEN THE BALLS IN THE LAUNDRY BASKET
11:30AM 25 UPSTAIRS AT BRITON COURT. THERE WAS A SEARCH WARRANT EXECUTED

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11:30AM 1 AT THAT LOCATION, AND THAT'S WHERE THE BALLS WERE. SO HOW ELSE
11:30AM 2 WOULD MR. VEGA KNOW THAT THAT'S WHERE THEY HID THEM? AND
11:30AM 3 THAT'S EXACTLY WHERE THEY WERE FOUND.

11:30AM 4 THE COURT: OKAY.

11:30AM 5 WELL, IN ADDITION TO WHAT YOU'VE POINTED OUT IN THE
11:30AM 6 TRANSCRIPT OF RAMIRO CAZARES'S TESTIMONY, CAZARES SAYS, "WE
11:31AM 7 DECIDED TO DO THAT TOGETHER. NO ONE FORCED HIM. HE TOOK THESE
11:31AM 8 ACTIONS ON HIS OWN," TALKING ABOUT JUAN VEGA.

11:31AM 9 I HAVE IN MY NOTES, AND I'M SURE IT'S IN THIS
11:31AM 10 TRANSCRIPT HERE, THAT CAZARES CALLED JUAN VEGA, WHO DROVE HIS
11:31AM 11 HONDA TO MAKE THE PICKUP OF DRUGS.

11:31AM 12 MS. BATSON: YES, YOUR HONOR. AND WHAT MR. CAZARES
11:31AM 13 TESTIFIED TO IS THAT WHILE HE WAS PUMPING GAS, MR. VEGA WENT
11:31AM 14 OVER AND MET WITH THE PEOPLE, OBTAINED THE METHAMPHETAMINE,
11:31AM 15 AND GOT BACK IN THE CAR AND SAID, YOU KNOW, "IT'S DONE." THEN
11:31AM 16 THEY TOGETHER DROVE TO MR. VEGA'S APARTMENT, LOOKED AT THE
11:31AM 17 METHAMPHETAMINE, SAW IT WAS METHAMPHETAMINE, LEFT IT IN THE
11:31AM 18 CAR OVERNIGHT, AND THEN THEY DROVE IT TO BRITON COURT THE NEXT
11:31AM 19 MORNING AND HID IT IN THE LAUNDRY BASKET WITH THE CLOTHES.

11:31AM 20 THE COURT: OKAY. AND THEN CAZARES TESTIFIED THAT
11:32AM 21 HE AND JUAN VEGA COOKED METHAMPHETAMINE AT THE BRITON
11:32AM 22 COURT HOUSE. THAT SUGGESTS A WORKING RELATIONSHIP.

11:32AM 23 MS. BATSON: IT WAS PRIMO WHO GAVE THEM THE
11:32AM 24 INSTRUCTIONS ON HOW TO COOK.

11:32AM 25 THE COURT: THEN THERE WAS THE TESTIMONY OF AGENT

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11:32AM 1 MATA, WHO SAID WHEN HE ARRESTED VEGA, VEGA GAVE A VOLUNTARY
11:32AM 2 STATEMENT. VEGA SAID HE KNEW CAZARES AND THAT CAZARES'S SOURCE
11:32AM 3 OF DRUGS WAS PRIMO. VEGA SAID HE WAS A RUNNER FOR CAZARES AND
11:32AM 4 HE PICKED UP MONEY. AND MR. VEGA SAID HE KNEW THAT THE BLACK
11:32AM 5 HONDA ACCORD HAD HIDDEN TRAPS.

11:32AM 6 SO, MR. PETRAZIO, I'M GOING TO DENY YOUR MOTION FOR
11:32AM 7 JUDGMENT OF ACQUITTAL. I THINK THERE IS EVIDENCE UPON WHICH
11:32AM 8 A JURY COULD RELY TO BASE A VERDICT OF GUILTY.

11:32AM 9 MR. PETRAZIO: THANK YOU, YOUR HONOR.

11:32AM 10 THE COURT: ALL RIGHT.

11:32AM 11 I'M DENYING THE RULE 29 MOTIONS.

11:32AM 12 THE GOVERNMENT HAS RESTED.

11:32AM 13 I'M GOING TO BRING THE JURY BACK OUT HERE. EACH
11:33AM 14 DEFENSE COUNSEL SHOULD STAND AND ANNOUNCE TO THE JURY THAT YOU
11:33AM 15 HAVE ALSO RESTED, UNLESS YOU HAVE WITNESSES, UNLESS SOMETHING
11:33AM 16 HAS CHANGED. OKAY.

11:33AM 17 SO WE'LL DO THAT. THEN I'LL LET THE JURY GO UNTIL
11:33AM 18 PROBABLY--I'M THINKING--IT TAKES ME A LITTLE WHILE TO PUT THE
11:33AM 19 CHARGE TOGETHER, AND THEN YOU'LL NEED TIME TO LOOK AT IT. IT'S
11:33AM 20 11:30. I WAS THINKING ABOUT BRINGING THEM BACK AT 2:00. WHAT
11:33AM 21 DO COUNSEL FEEL ABOUT THAT? THEN HAVE FINAL ARGUMENTS AT 2:00.
11:33AM 22 THAT'S ABOUT AS QUICK AS WE COULD DO IT. AND IT DEPENDS ON HOW
11:33AM 23 MUCH TIME YOU WANT FOR FINAL ARGUMENTS.

11:34AM 24 MR. KEMP: WELL, YOUR HONOR, IN TALKING WITH
11:34AM 25 MS. BATSON, I THINK THAT WE'RE LOOKING AT PROBABLY THREE HOURS

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11:34AM 1 IN TERMS OF ACTUAL CLOSING-ARGUMENT TIME, DIVIDED AMONG THE
11:34AM 2 FOUR OF US.

11:34AM 3 THE COURT: OKAY. SO SHALL WE BRING THEM BACK
11:34AM 4 TOMORROW?

11:34AM 5 MR. WHALEN: I THINK THAT MAY BE BEST, JUST BECAUSE
11:34AM 6 IF WE GET INTO A SITUATION WHERE THE CHARGE TAKES A LONG TIME,
11:34AM 7 TO HAVE THE GOVERNMENT ARGUE FIRST AND HAVE US COME BACK THE
11:34AM 8 FIRST DAY, I THINK--

11:34AM 9 THE COURT: YEAH, I THINK IT WOULD BE BETTER IF YOU
11:34AM 10 ARGUED ON THE SAME DAY. OKAY. THEY LIKE TO GO HOME AT 5:00.
11:34AM 11 SO I'M GOING TO BRING THEM OUT HERE AND LET ALL DEFENDANTS
11:34AM 12 REST. I'LL TELL THE JURY, "ALL OF THE EVIDENCE IS NOW BEFORE
11:34AM 13 YOU. THE NEXT STEP IS FOR ME TO PREPARE THE JURY INSTRUCTIONS
11:34AM 14 AND HAVE A CONFERENCE WITH COUNSEL. AND WE WON'T HAVE ENOUGH
11:35AM 15 TIME THIS AFTERNOON TO BOTH ARGUE AND FOR YOU TO DELIBERATE."
11:35AM 16 OKAY? IS THAT AGREEABLE?

11:35AM 17 MR. WHALEN: IT IS, YOUR HONOR.

11:35AM 18 MR. KEMP: YES, YOUR HONOR.

11:35AM 19 MS. BATSON: YES, YOUR HONOR.

11:35AM 20 MR. PETRAZIO: YES, YOUR HONOR.

11:35AM 21 THE COURT: OKAY. GREAT.

11:35AM 22 MR. WHALEN: DO YOU WANT US TO PUT ON THE RECORD
11:35AM 23 BRIEFLY THAT MR. BOWEN UNDERSTANDS HIS RIGHT TO TESTIFY OR
11:35AM 24 NOT TESTIFY, AND HE'S ELECTING TO NOT TESTIFY?

11:35AM 25 THE COURT: YOU WANT TO ASK HIM THAT?

SWORN TESTIMONY OF TIMOTHY LEDON BOWEN

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11:35AM 1 MR. WHALEN: YES. CAN I?

11:35AM 2 THE COURT: SURE. YOU WILL NEED A MICROPHONE.

11:35AM 3 MR. WHALEN: SHALL I JUST HAVE HIM GO TO THE PODIUM?

11:35AM 4 THE COURT: SURE. THAT WILL BE FINE.

11:35AM 5 MR. WHALEN: DOES HE NEED TO BE SWORN?

11:35AM 6 THE COURT: YES.

11:35AM 7 MR. BOWEN, WOULD YOU RAISE YOUR RIGHT HAND?

11:35AM 8 THE WITNESS: IT'S AGAINST MY RELIGION TO SWEAR.

11:35AM 9 THE COURT: DO WHAT?

11:35AM 10 THE WITNESS: IT'S AGAINST MY RELIGION TO SWEAR.

11:35AM 11 THE COURT: I'M NOT GOING TO ASK YOU TO SWEAR.

11:36AM 12 I'M GOING TO ASK YOU TO AFFIRM.

11:36AM 13 THE WITNESS: ALL RIGHT.

11:36AM 14 DEPUTY CLERK: YOU DO AFFIRM THAT THE TESTIMONY

11:36AM 15 YOU SHALL GIVE IN THIS CASE NOW IN HEARING SHALL BE THE TRUTH,

11:36AM 16 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

11:36AM 17 THE WITNESS: YES.

11:36AM 18 EXAMINATION OF TIMOTHY LEDON BOWEN

11:36AM 19 MR. WHALEN:

11:36AM 20 Q. STATE YOUR NAME FOR THE RECORD AND FOR THE COURT.

11:36AM 21 A. TIMOTHY LEDON BOWEN.

11:36AM 22 Q. TIM, WE DISCUSSED YOUR RIGHT TO TESTIFY, IS THAT

11:36AM 23 CORRECT?

11:36AM 24 A. YES.

11:36AM 25 Q. YOU UNDERSTAND THAT IT'S YOUR RIGHT AND YOUR RIGHT

SWORN TESTIMONY OF TIMOTHY LEDON BOWEN

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11:36AM 1 ALONE, IS THAT RIGHT?

11:36AM 2 A. YES.

11:36AM 3 Q. AND BASED ON OUR DISCUSSIONS, YOU HAVE ELECTED NOT TO
11:36AM 4 TESTIFY AT YOUR TRIAL, IS THAT RIGHT?

11:36AM 5 A. YES.

11:36AM 6 Q. AND THAT WAS A DECISION THAT YOU MADE ON YOUR OWN,
11:36AM 7 FREELY AND VOLUNTARILY, IS THAT CORRECT?

11:36AM 8 A. YES.

11:36AM 9 MR. WHALEN: THANK YOU.

11:36AM 10 THAT'S ALL I HAVE, YOUR HONOR.

11:41AM 11 THE COURT: MR. PETRAZIO?

11:41AM 12 MR. PETRAZIO: YOUR HONOR, I WOULD LIKE A MOMENT
11:41AM 13 ALONE WITH THE INTERPRETER TO DISCUSS THE SAME ISSUE.

11:41AM 14 THE COURT: OKAY.

11:41AM 15 MR. PETRAZIO: YOUR HONOR, AFTER HAVING SPOKEN
11:41AM 16 WITH MR. VEGA AND ADVISING HIM OF HIS RIGHT TO TESTIFY, AND MY
11:41AM 17 COUNSEL WITH RESPECT TO THAT, HE HAS CHOSEN TO WAIVE HIS RIGHT
11:41AM 18 TO TESTIFY ON HIS OWN BEHALF.

11:41AM 19 THE COURT: ALL RIGHT. OKAY.

11:41AM 20 MR. KEMP?

11:41AM 21 MR. KEMP: WITH RESPECT TO MR. SALAZAR, WE, TOO,
11:41AM 22 HAVE DISCUSSED AD NAUSEAM HIS RIGHT TO TESTIFY, AND HE BELIEVES
11:41AM 23 IT'S IN HIS BEST INTEREST NOT TO TESTIFY AT THIS POINT, AND
11:41AM 24 HE'S NOT GOING TO DO SO.

11:41AM 25 THE COURT: OKAY. THANK YOU.

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11:41AM 1 I'M GOING TO BRING IN THE JURY.

11:41AM 2 MR. HOLLIS, GO AHEAD.

11:42AM 3 COURT SECURITY OFFICER: ALL RISE.

11:43AM 4 [OPEN COURT, DEFENDANTS AND JURY PRESENT]

11:43AM 5 THE COURT: ALL RIGHT. BE SEATED, PLEASE.

11:43AM 6 LADIES AND GENTLEMEN, AS I TOLD YOU, THE GOVERNMENT
11:43AM 7 HAS RESTED ITS CASE-IN-CHIEF.

11:43AM 8 MR. KEMP, WHAT SAYS MR. SALAZAR?

11:43AM 9 MR. KEMP: YOUR HONOR, ON BEHALF OF MR. SALAZAR, AT
11:43AM 10 THIS TIME THE DEFENSE RESTS.

11:43AM 11 THE COURT: ALL RIGHT. THANK YOU.

11:43AM 12 MR. WHALEN?

11:43AM 13 MR. WHALEN: ON BEHALF OF TIMOTHY LEDON BOWEN, WE
11:43AM 14 REST.

11:43AM 15 THE COURT: OKAY.

11:43AM 16 MR. PETRAZIO: YOUR HONOR, ON BEHALF OF JUAN CARLOS
11:43AM 17 VEGA, WE REST.

11:43AM 18 THE COURT: ALL RIGHT. THANK YOU.

11:43AM 19 LADIES AND GENTLEMEN, ALL OF THE EVIDENCE IS NOW
11:43AM 20 BEFORE YOU IN THIS CASE. THE NEXT STEP IS FOR THE COURT TO
11:43AM 21 PREPARE JURY INSTRUCTIONS. AFTER I HAVE PREPARED THE JURY
11:43AM 22 INSTRUCTIONS, THEN I'LL CONDUCT A HEARING WITH ALL COUNSEL
11:43AM 23 TO GIVE THEM AN OPPORTUNITY TO REVIEW MY DRAFT OF THE JURY
11:43AM 24 INSTRUCTIONS AND TO MAKE ANY REQUESTS THEY MIGHT HAVE FOR
11:43AM 25 CHANGES TO THE INSTRUCTIONS. THAT PROCESS WILL TAKE AT LEAST

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11:43AM 1 TWO HOURS, PROBABLY TWO AND A HALF OR THREE HOURS. SO BY THE
11:44AM 2 TIME WE FINISH THAT AND THEN BEGIN FINAL ARGUMENTS--AND THERE
11:44AM 3 ARE FOUR LAWYERS WHO WILL BE MAKING FINAL ARGUMENTS TO YOU, SO
11:44AM 4 THAT PROCESS WILL TAKE PROBABLY SEVERAL HOURS--THEN WE WOULD BE
11:44AM 5 RIGHT AT 5:00 OR EVEN AFTER. AND I KNOW THAT SOME OF YOU NEED
11:44AM 6 TO LEAVE AT 5:00. SO WE'RE GOING TO RECESS FOR TODAY. I WILL
11:44AM 7 WORK ON THE JURY INSTRUCTIONS. I'LL HAVE A HEARING LATER THIS
11:44AM 8 AFTERNOON WITH COUNSEL TO GO OVER THOSE INSTRUCTIONS AND GET
11:44AM 9 THEM FINALIZED, AND THEN WE'LL START WITH FINAL ARGUMENTS IN
11:44AM 10 THE MORNING.

11:44AM 11 ALL RIGHT, LADIES AND GENTLEMEN.

11:44AM 12 OH, AND I WILL EXPLAIN TO YOU THE HOUR AND 45
11:44AM 13 MINUTES THAT YOU WERE IN THE JURY ROOM JUST NOW. I'LL EXPLAIN
11:44AM 14 THAT PROCESS TO YOU AFTER THE TRIAL.

11:44AM 15 THE ONLY OTHER THING I WANT TO SAY IS, JUROR NUMBER
11:44AM 16 2, I DID GET YOUR NOTE. I DON'T THINK THERE WILL BE ANY
11:44AM 17 CONFLICT WITH YOUR APPOINTMENTS NEXT WEEK.

11:45AM 18 OKAY, LADIES AND GENTLEMEN. AGAIN THANK YOU FOR
11:45AM 19 YOUR TIME AND ATTENTION. I'LL SEE YOU TOMORROW MORNING AT
11:45AM 20 9 AM.

11:45AM 21 COURT SECURITY OFFICER: ALL RISE.

11:45AM 22 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

11:45AM 23 THE COURT: ALL RIGHT. I THINK WHAT WE'LL DO IS
11:45AM 24 RECESS UNTIL--LET ME HAVE COUNSEL COME BACK AT--I CAN PROBABLY
11:45AM 25 HAVE IT DONE BY 2:00. THAT WILL GIVE ME TWO HOURS AND 15

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11:45AM 1 MINUTES. IS 2:00 OKAY?

11:46AM 2 SIMULTANEOUS VOICES: THAT'S FINE.

11:46AM 3 THE COURT: OKAY. I'LL SEE YOU BACK AT 2:00. DO
11:46AM 4 YOU WANT THE DEFENDANTS BACK HERE FOR THE CHARGE CONFERENCE?
11:46AM 5 IT DOESN'T MATTER TO ME.

11:46AM 6 MR. WHALEN: ON BEHALF OF MR. BOWEN, HE'LL WAIVE HIS
11:46AM 7 PRESENCE AT THAT HEARING, YOUR HONOR.

11:46AM 8 THE COURT: OKAY.

11:46AM 9 MR. PETRAZIO: MR. VEGA WAIVES HIS RIGHT TO BE
11:46AM 10 PRESENT FOR THAT PARTICULAR CONFERENCE, YOUR HONOR.

11:46AM 11 THE COURT: OKAY.

11:46AM 12 MR. KEMP: YOUR HONOR, MR. SALAZAR WAIVES HIS
11:46AM 13 APPEARANCE FOR THE CONFERENCE AS WELL.

11:46AM 14 THE COURT: OKAY. THEN, I'LL TELL THE MARSHALS
11:46AM 15 THAT THEY CAN TAKE MR. SALAZAR, MR. BOWEN AND MR. VEGA BACK
11:46AM 16 TO WHEREVER THEY ARE BEING HOUSED. JUST HAVE THEM BACK HERE
11:46AM 17 TOMORROW MORNING BY 9:00.

11:47AM 18 OKAY. THANK YOU. WE'LL RECESS UNTIL 2:00 THIS
11:47AM 19 AFTERNOON.

02:35PM 20 [RECESS]

02:35PM 21 [OPEN COURT, NEITHER DEFENDANTS NOR JURY PRESENT]

02:35PM 22 THE COURT: KEEP YOUR SEATS.

02:40PM 23 Y'ALL JUST LET ME KNOW WHEN YOU ARE READY.

02:52PM 24 MR. GONZALEZ AND MS. BATSON, ARE YOU READY, OR ARE
02:52PM 25 YOU STILL WORKING ON IT?

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02:52PM 1 MR. GONZALEZ: I'M READY.

02:52PM 2 THE COURT: LET'S GO ON THE RECORD.

02:52PM 3 TO THE PROPOSED JURY INSTRUCTIONS, ARE THERE
02:52PM 4 OBJECTIONS BY THE GOVERNMENT?

02:52PM 5 MR. GONZALEZ: YOUR HONOR, THE FIRST QUESTION I
02:52PM 6 HAVE IS ON PAGE 5, THE ACCOMPLICE/CODEFENDANT PLEA-AGREEMENT
02:52PM 7 SECTION.

02:52PM 8 THE COURT: OKAY.

02:52PM 9 MR. GONZALEZ: I THINK THAT ADDRESSES CODEFENDANTS,
02:52PM 10 BUT THERE WERE OTHERS WHO WEREN'T CODEFENDANTS. FOR EXAMPLE--

02:52PM 11 THE COURT: I CHANGED THE WORDING. I JUST GROUPED
02:52PM 12 THEM ALL AS ACCOMPLICES, WHICH WOULD INCLUDE CODEFENDANTS, I
02:52PM 13 BELIEVE.

02:52PM 14 MR. GONZALEZ: OKAY. WELL, IT SAYS "SOME OF WHOM
02:52PM 15 WERE NAMED AS CODEFENDANTS."

02:52PM 16 THE COURT: RIGHT. SOME OF YOUR WITNESSES ARE
02:52PM 17 CODEFENDANTS, SOME AREN'T.

02:52PM 18 MR. GONZALEZ: OKAY. I SEE WHAT YOU DID.

02:53PM 19 THE COURT: THERE MAY BE OTHER LANGUAGE FROM 1.14
02:53PM 20 ON ACCOMPLICE-INFORMER IMMUNITY THAT COULD BE PUT IN THERE.
02:53PM 21 I'M NOT SURE ANYBODY HAS BEEN GIVEN IMMUNITY. I DIDN'T
02:53PM 22 HEAR ANYTHING ABOUT THAT. SOME OF THEM DID TESTIFY THAT THE
02:53PM 23 GOVERNMENT HAD AGREED NOT TO PROSECUTE THEM IF THEY TESTIFIED.

02:53PM 24 MR. GONZALEZ: OKAY.

02:53PM 25 YOUR HONOR, THEN, ON PAGE 10, WHERE IT SAYS "COUNT 1

02:53PM 1 OF THE SECOND SUPERSEDING INDICTMENT CHARGES"--AND IT HAS THE
02:54PM 2 DEFENDANTS--AND IT SAYS, "DID KNOWINGLY AND INTENTIONALLY
02:54PM 3 COMBINE, CONSPIRE AND AGREE WITH EACH OTHER AND OTHER PERSONS
02:54PM 4 KNOWN AND UNKNOWN TO THE UNITED STATES GRAND JURY, TO KNOWINGLY
02:54PM 5 AND INTENTIONALLY POSSESS WITH THE INTENT TO DISTRIBUTE"--
02:54PM 6 I THINK THE INDICTMENT SAYS "MANUFACTURE AND DISTRIBUTE" OR
02:54PM 7 "DISTRIBUTE AND MANUFACTURE," ONE OF THE TWO. I THINK IT'S
02:54PM 8 "MANUFACTURE AND DISTRIBUTE." SO, OBVIOUSLY, IN ORDER FOR IT
02:54PM 9 TO TRACK THE INDICTMENT...

02:54PM 10 THE COURT: I DON'T SEE "MANUFACTURE" IN THERE.

02:55PM 11 MR. GONZALEZ: THAT'S FINE. IT DOES SAY IT IN THE
02:55PM 12 CAPTION ON TOP, IT JUST DOESN'T SAY IT IN THE BODY.

02:55PM 13 THE COURT: OKAY.

02:55PM 14 MR. GONZALEZ: IN THE CAPTION IT SAYS, "CONSPIRACY
02:55PM 15 TO POSSESS WITH THE INTENT TO MANUFACTURE AND DISTRIBUTE
02:55PM 16 METHAMPHETAMINE," BUT IN THE BODY, YOU ARE CORRECT, YOUR HONOR,
02:55PM 17 IT JUST SAYS "DISTRIBUTE."

02:55PM 18 THE COURT: IF Y'ALL CAN AGREE ON SOMETHING--I WAS
02:55PM 19 JUST GOING BY WHAT'S ALLEGED IN THE BODY. I DIDN'T EVEN LOOK
02:55PM 20 AT THE CAPTION.

02:55PM 21 MR. GONZALEZ: AND I THINK THAT'S PROBABLY CORRECT.
02:55PM 22 I THINK THAT'S CONTROLLING. SO I THINK THAT TECHNICALLY IS
02:55PM 23 CORRECT.

02:55PM 24 THE COURT: WELL, THEN, I PROBABLY NEED TO ASK
02:55PM 25 MS. SANFORD, WHEN SHE SENDS A COPY OF THE SECOND SUPERSEDING

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02:55PM 1 INDICTMENT BACK TO THE JURY, TO TAKE OUT NOT ONLY THE
02:55PM 2 FORFEITURE NOTICE BUT ALSO THE CAPTION.

02:55PM 3 MR. GONZALEZ: I JUST DON'T WANT ANY QUESTIONS FROM
02:55PM 4 THE JURY LATER ON ABOUT THAT ISSUE.

02:56PM 5 THE COURT: YEAH.

02:56PM 6 ANY OBJECTION TO TAKING OUT THE CAPTION THAT
02:56PM 7 REFERS TO "DISTRIBUTION"? I MEAN, THERE'S NO ALLEGATION OF
02:56PM 8 DISTRIBUTION IN THE WORDING OF COUNT 1 OTHER THAN IN THE
02:56PM 9 PARENTHETICAL PORTION OF THE CAPTION.

02:56PM 10 MR. WHALEN: THE "MANUFACTURE"?

02:56PM 11 THE COURT: I'M SORRY. YEAH, "MANUFACTURING." TAKE
02:56PM 12 OUT THE CAPTIONING THAT REFERS TO "MANUFACTURING" WHEN THERE'S
02:56PM 13 NO REFERENCE TO THAT IN THE REST OF COUNT 1.

02:56PM 14 MR. WHALEN: I'D HAVE NO OBJECTIONS TO THAT.

02:56PM 15 MR. KEMP: I'D HAVE NO OBJECTION TO THAT EITHER.

02:56PM 16 MR. PETRAZIO: NO OBJECTION.

02:56PM 17 THE COURT: OKAY.

02:56PM 18 MS. SANFORD, WOULD YOU TAKE OUT THAT CAPTION THERE.

02:56PM 19 DEPUTY COURT CLERK: YES.

02:57PM 20 THE COURT: WHAT ELSE, MR. GONZALEZ?

02:57PM 21 MR. GONZALEZ: AND I THINK IN THE ELEMENTS, YOUR
02:57PM 22 HONOR, IT TALKS ABOUT "METHAMPHETAMINE (ACTUAL)" BEFORE
02:57PM 23 "MIXTURE." I KNOW THAT THAT'S JUST STYLISTIC. IN REGARDS
02:57PM 24 TO, ONCE AGAIN, WHAT'S CONSTRUCTED ABOVE, AS OPPOSED TO WHAT'S
02:57PM 25 IN THE ELEMENTS. THEY'RE IN REVERSE ORDER. WE TALKED ABOUT

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02:57PM 1 MIXTURE FIRST, AND THAT'S THE WAY IT'S IN THE INDICTMENT.

02:57PM 2 THE COURT: ALL RIGHT. NOW, WAIT A MINUTE. LET'S
02:58PM 3 SEE. OH, OKAY. THE INDICTMENT ALLEGES "MIXTURE" FIRST AND
02:58PM 4 THEN "ACTUAL"?

02:58PM 5 MR. GONZALEZ: CORRECT. AND THAT'S HOW YOU
02:58PM 6 INSTRUCTED ABOVE, ALSO. RIGHT BEFORE THAT, IN THE PARAGRAPH
02:58PM 7 ABOVE, YOU SAY "500 GRAMS OR MORE OF A MIXTURE OR SUBSTANCE
02:58PM 8 CONTAINING A DETECTABLE AMOUNT OF METHAMPHETAMINE AND/OR 50
02:58PM 9 GRAMS--IT DOESN'T MAKE A DIFFERENCE. I'M JUST POINTING THAT
02:58PM 10 OUT.

02:58PM 11 THE COURT: YEAH, I DON'T KNOW THAT IT MATTERS, BUT
02:58PM 12 I MEAN, I CAN INVERT THAT IF YOU WANT ME TO.

02:58PM 13 MR. GONZALEZ: OKAY.

02:58PM 14 THE COURT: I DON'T THINK IT'S A BIG DEAL.

02:58PM 15 MR. GONZALEZ: RIGHT. I WAS JUST POINTING THAT OUT
02:58PM 16 TO THE COURT THAT THAT WAS DIFFERENT.

02:58PM 17 THE COURT: OKAY.

02:58PM 18 MR. GONZALEZ: NOW, IN THE JURY VERDICT, YOUR HONOR,
02:59PM 19 I DON'T THINK WE NEED THE PORTION WHERE IT SAYS, "SO IF YOU
02:59PM 20 HAVE FOUND THE DEFENDANT RENE CORTEZ SALAZAR GUILTY, YOU MUST
02:59PM 21 ANSWER THE FOLLOWING QUESTION," AND THEN IT GOES TO "1. DO
02:59PM 22 YOU FIND BEYOND A REASONABLE DOUBT THAT THE CONSPIRACY ALLEGED
02:59PM 23 INVOLVED A MIXTURE OR SUBSTANCE CONTAINING DETECTABLE AMOUNTS
02:59PM 24 OF METHAMPHETAMINE OR ACTUAL METHAMPHETAMINE?" BECAUSE IF THEY
02:59PM 25 FIND HIM GUILTY OF COUNT 1, I THINK THAT APPLIES TO A SITUATION

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02:59PM 1 WHERE YOU HAVE MULTIPLE DRUGS ALLEGED IN ONE COUNT AND,
02:59PM 2 THEREFORE, YOU ARE HAVING THEM GO THROUGH EACH ONE AND HAVING
02:59PM 3 THEM--FOR EXAMPLE, IF THEY HAD ALLEGED--IF WE HAD ALLEGED
02:59PM 4 MARIJUANA AND METHAMPHETAMINE, HAVING THEM FIND THAT HE WAS
02:59PM 5 INVOLVED WITH MARIJUANA, THEN FINDING THE QUANTITY, HAVING THEM
02:59PM 6 FIND--AND SO ON AND SO FORTH. SO I DON'T THINK WE NEED THAT
02:59PM 7 PARTICULAR QUESTION. I THINK IT'S REDUNDANT.

02:59PM 8 THE COURT: OKAY. I'M TRYING TO THINK OF--LET'S
02:59PM 9 SEE. WHY DID I HAVE THAT?

02:59PM 10 MR. GONZALEZ: I THINK MS. RATTAN TYPICALLY CHARGES
03:00PM 11 MORE THAN ONE DRUG IN HER INDICTMENTS. SHE DOESN'T SEPARATE
03:00PM 12 THEM OUT LIKE I DO. SO I THINK MAYBE THAT'S WHERE THAT CAME
03:00PM 13 FROM.

03:00PM 14 THE COURT: LET'S SEE. YES, YOU ARE RIGHT. THE
03:00PM 15 CASE THAT I TRIED--ONE OF THE CASES I TRIED IN NOVEMBER
03:00PM 16 INVOLVED TWO DIFFERENT DRUGS.

03:00PM 17 MR. GONZALEZ: CORRECT. AND THAT'S WHEN YOU HAVE
03:00PM 18 THE SAME DRUG IN ONE COUNT AND YOU HAVE TO--I MEAN, I GUESS
03:00PM 19 THE JURY COULD FIND TWO--ONE DRUG AND NOT THE OTHER.

03:00PM 20 THE COURT: OH, OKAY. I'M TOLD THAT YOUR PROPOSED
03:00PM 21 INSTRUCTION CAME LIKE THIS.

03:00PM 22 MR. GONZALEZ: IF IT DID, I APOLOGIZE FOR THAT.

03:00PM 23 THE COURT: BUT I THINK YOU ARE RIGHT. I DON'T
03:00PM 24 THINK THERE'S A NEED TO ASK THAT. IF THEY FOUND HIM GUILTY,
03:00PM 25 THAT'S IN THE INDICTMENT ITSELF.

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03:00PM 1 MR. GONZALEZ: CORRECT. IF THEY FOUND HIM GUILTY OF
03:00PM 2 THE METHAMPHETAMINE. SO THE ONLY QUESTION LEFT IS THE QUANTITY.

03:01PM 3 THE COURT: YES. OKAY. LET'S SEE. WELL, IT'S OKAY
03:01PM 4 TO LEAVE IN THE SENTENCE, THEN, "SO IF YOU FOUND THE DEFENDANT
03:01PM 5 RENE CORTEZ SALAZAR GUILTY OF COUNT 1 OF THE SUPERSEDING
03:01PM 6 INDICTMENT, YOU MUST ANSWER THE FOLLOWING QUESTION." AND THEN
03:01PM 7 WE COULD JUST START WITH "PLEASE INDICATE YOUR FINDING OF THE
03:01PM 8 QUANTITY INVOLVED IN THE CONSPIRACY."

03:01PM 9 MR. GONZALEZ: YES, SIR.

03:01PM 10 THE COURT: OKAY. ALL RIGHT. THAT MAKES SENSE.
03:01PM 11 THANK YOU.

03:01PM 12 MR. GONZALEZ: AND FINALLY, YOUR HONOR, IN REGARDS
03:01PM 13 TO "MULTIPLE CONSPIRACIES," I WOULD ARGUE THAT THEY'RE NOT
03:01PM 14 MULTIPLE CONSPIRACIES; THERE'S ONLY ONE CONSPIRACY HERE,
03:01PM 15 AND THE EVIDENCE HAS ONLY INDICATED ONE CONSPIRACY.

03:02PM 16 THE COURT: OKAY. I THINK MR. WHALEN ASKED FOR
03:02PM 17 THAT.

03:02PM 18 MR. GONZALEZ: YOUR HONOR, I WOULD SIMPLY ARGUE THAT
03:02PM 19 IT'S THE NATURE AND SCOPE OF THE AGREEMENT THAT DISTINGUISHES
03:02PM 20 BETWEEN A SINGLE CONSPIRACY AND MULTIPLE CONSPIRACIES AND THAT
03:02PM 21 IT IS THE COMMON CRIMINAL OBJECTIVE THAT DETERMINES WHETHER
03:02PM 22 IT'S ONE CONSPIRACY OR A SECOND CONSPIRACY, OR TWO CONSPIRACIES.
03:02PM 23 ALSO, THE CASE LAW INDICATES THAT THERE ARE THREE FACTORS
03:02PM 24 TO BE CONSIDERED IN DETERMINING WHETHER THERE'S A SINGLE OR
03:02PM 25 MULTIPLE CONSPIRACIES:

03:02PM 1 FIRST, WHAT WAS THE COMMON GOAL OF THE CRIMINAL
03:02PM 2 AGREEMENT?

03:02PM 3 SECONDLY, WHAT WAS THE NATURE OF THE AGREEMENT?

03:02PM 4 THIRD, DO THE NETWORK ACTIVITIES OF THE PARTICIPANTS
03:02PM 5 OVERLAP?

03:02PM 6 THOSE ARE THE--WHAT SOME OF THE CASE LAW SAYS YOU
03:02PM 7 SHOULD LOOK AT.

03:02PM 8 IN REGARDS TO THE FIRST FACTOR, THE COMMON GOAL
03:03PM 9 IN THIS CONSPIRACY WAS TO PURCHASE METHAMPHETAMINE IN DALLAS,
03:03PM 10 TRANSPORT IT TO SHERMAN AND DENISON, AND DISTRIBUTE IT THERE.
03:03PM 11 THAT WAS THE COMMON GOAL OF ALL THE PEOPLE THAT WERE INVOLVED
03:03PM 12 HERE. THERE WERE TWO SEPARATE SOURCES OF SUPPLY, BUT THE
03:03PM 13 COMMON GOAL WAS THAT, OBTAIN METHAMPHETAMINE IN DALLAS,
03:03PM 14 TRANSPORT IT TO SHERMAN-DENISON, AND DISTRIBUTE IT THERE,
03:03PM 15 AND THEN DO THAT ALL OVER AGAIN.

03:03PM 16 AND IN REGARDS TO THE SECOND FACTOR OR SECOND
03:03PM 17 CONSIDERATION, "WHAT WAS THE NATURE OF THE AGREEMENT," THE
03:03PM 18 NATURE OF THE AGREEMENT WAS: SELL THE METHAMPHETAMINE IN
03:03PM 19 SHERMAN-DENISON, GET THE MONEY, AND TAKE IT TO THE TWO
03:03PM 20 SUPPLIERS.

03:03PM 21 AND DURING THE TESTIMONY, WHAT THE WITNESSES SAID
03:03PM 22 IS THAT THEY WENT FROM ONE SUPPLIER TO ANOTHER SUPPLIER BECAUSE
03:03PM 23 THE MONEY--OR THE COST WAS CHEAPER ONE TO THE OTHER. BUT
03:03PM 24 DURING THE CONSPIRACY, THERE WAS TIMES WHERE THEY WERE GETTING
03:03PM 25 SOME FROM EITHER OF THE SUPPLIERS. BECAUSE THE COMMON GOAL AND

03:04PM 1 OBJECTIVE WAS, ONCE AGAIN, TO DISTRIBUTE THE METHAMPHETAMINE IN
03:04PM 2 SHERMAN-DENISON.

03:04PM 3 AND LASTLY, DO THE NETWORK ACTIVITIES OR THE
03:04PM 4 PARTICIPANTS OVERLAP? WELL, THE ONLY OVERLAP THAT OCCURS IS
03:04PM 5 GOING BACK AND FORTH BETWEEN THE SUPPLIERS. I KNOW THAT THERE
03:04PM 6 WAS SOME TESTIMONY ABOUT SOME OF THESE INDIVIDUALS GETTING
03:04PM 7 SUPPLIED BY OTHER PEOPLE BEFORE THEY JOINED THIS GROUP, BUT I
03:04PM 8 THINK THE BULK OF THE TESTIMONY HERE WAS IT WAS THIS GROUP OF
03:04PM 9 PEOPLE THAT KEPT BEING MENTIONED OVER AND OVER AND OVER AGAIN
03:04PM 10 DEALING TOGETHER, WORKING TOGETHER FOR THAT COMMON GOAL AND
03:04PM 11 OBJECTIVE, WHICH WAS THE DISTRIBUTION OF THE METHAMPHETAMINE
03:04PM 12 IN SHERMAN-DENISON. SO THERE'S ONLY ONE CONSPIRACY HERE, NOT
03:04PM 13 MULTIPLE CONSPIRACIES.

03:04PM 14 THE COURT: AND THE TWO SUPPLIERS BEING FERNANDO
03:04PM 15 PERALES AND PRIMO?

03:04PM 16 MR. GONZALEZ: THE TWO SUPPLIERS BEING FERNANDO
03:04PM 17 PERALES AND ANDY NGUYEN.

03:04PM 18 THE COURT: WELL, ANDY NGUYEN GOT HIS DRUGS FROM
03:05PM 19 PRIMO. RIGHT?

03:05PM 20 MR. GONZALEZ: CORRECT. BUT NONE OF THE--AND I
03:05PM 21 SAY "THE TWO SUPPLIERS" HERE BECAUSE NONE OF THE PARTICIPANTS
03:05PM 22 IN--THAT TESTIFIED ACTUALLY RECEIVED IT DIRECTLY FROM PRIMO
03:05PM 23 OR ACTUALLY RECEIVED IT DIRECTLY FROM PELON, WHO WAS FERNANDO
03:05PM 24 PERALES'S SUPPLIER IN MEXICO, BECAUSE THOSE INDIVIDUALS WERE IN
03:05PM 25 MEXICO, OBVIOUSLY.

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03:05PM 1 THE COURT: YEAH. OKAY.

03:05PM 2 MR. GONZALEZ: AND IF THE COURT WISHES, I HAVE
03:05PM 3 SOME CITES. I HAVE SOME FIFTH CIRCUIT CITES AS WELL AS OTHER
03:05PM 4 CIRCUITS THAT HAVE WHAT I'VE JUST ARTICULATED TO THE COURT.

03:05PM 5 THE COURT: OKAY. ALL RIGHT. IS THAT IT FOR THE
03:05PM 6 GOVERNMENT?

03:05PM 7 MR. GONZALEZ: YES, YOUR HONOR, IT IS.

03:05PM 8 THE COURT: OKAY.

03:05PM 9 WHO WANTS TO SPEAK FIRST FOR THE DEFENSE?

03:05PM 10 MR. WHALEN: I WILL, YOUR HONOR.

03:06PM 11 THE COURT: OKAY.

03:06PM 12 MR. WHALEN: WOULD YOU LIKE ME TO RESPOND TO THE
03:06PM 13 MULTIPLE-CONSPIRACIES ARGUMENT?

03:06PM 14 THE COURT: YES.

03:06PM 15 MR. WHALEN: OKAY. YOUR HONOR, I THINK IF YOU LOOK
03:06PM 16 AT THE TESTIMONY THAT YOU HAVE AND THE EVIDENCE THAT YOU HAVE,
03:06PM 17 I THINK THERE IS EVIDENCE THAT THERE ARE MULTIPLE CONSPIRACIES.
03:06PM 18 I THINK IT'S TOO SIMPLISTIC TO THEN SAY THAT THE OVERALL SCHEME
03:06PM 19 WAS TO GET METHAMPHETAMINE IN DALLAS AND TAKE IT TO THE
03:06PM 20 SHERMAN-DENISON AREA. I THINK THE THING THAT--IF THAT IS
03:06PM 21 THE AGREEMENT, I THINK THAT'S AN OVERSIMPLIFICATION OF THE
03:06PM 22 AGREEMENT. EACH PART HAS A DIFFERENT AGREEMENT. AND I THINK
03:06PM 23 IF YOU LOOK AT THE EVIDENCE PRESENTED, YOU HAVE A GROUP OF
03:06PM 24 PEOPLE THAT WORKED WITH HOUSE, SALAZAR AND BOBBY JAMES AT ONE
03:06PM 25 PARTICULAR TIME, AND THEY WERE BEING SUPPLIED BY MR. CAMACHO.

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03:06PM 1 THEN I THINK THE ARGUMENT COULD ALSO BE MADE THAT ONCE KENNETH
03:07PM 2 HOUSE AND MR. SALAZAR ARE ARRESTED, THEY'RE NO LONGER A PART
03:07PM 3 OF THE CONSPIRACY, AND THAT CONSPIRACY ENDED AND THAT AGREEMENT
03:07PM 4 ENDED.

03:07PM 5 BECAUSE THEN YOU HAD TESTIMONY THAT MR. JAMES,
03:07PM 6 MELISSA STEWART AND TREY TIBBS THEN STARTED DEALING WITH
03:07PM 7 MR. CAMACHO DIRECTLY. SO THAT, THEN, IS ANOTHER AGREEMENT,
03:07PM 8 ANOTHER GROUP OF PEOPLE WORKING SEPARATELY FROM THE OVERALL
03:07PM 9 INITIAL GROUP, BECAUSE IT'S STARTING TO FALL APART.

03:07PM 10 THEN YOU HAVE MS. HOUSE AND MS. BOWEN, WHO TESTIFIED
03:07PM 11 THAT ONCE HER HUSBAND WENT TO JAIL, SHE STARTED DOING HER OWN
03:07PM 12 THING AND DIDN'T TELL HER HUSBAND ABOUT IT. SO THERE'S NOT
03:07PM 13 ANY KNOWLEDGE IMPUTED TO THEM, MR. HOUSE OR MR. SALAZAR, DURING
03:07PM 14 THAT PERIOD OF TIME.

03:07PM 15 THEN YOU ALSO HAVE--WHEN IT RELATES TO MR. BOWEN,
03:07PM 16 HE COMES ON THE SCENE IN JUNE OR JULY OR JULY OR AUGUST AND
03:07PM 17 HE'S TALKING TO KISHA ABOUT, "HEY, I NEED," SUPPOSEDLY, "A NEW
03:08PM 18 SOURCE." SO HE GETS INTRODUCED TO MR. PERALES. BUT THAT'S A
03:08PM 19 WHOLE DIFFERENT AGREEMENT.

03:08PM 20 SO I THINK THE EVIDENCE CAN SUPPORT THE ARGUMENT
03:08PM 21 THAT THESE WERE SEPARATE INDIVIDUAL AGREEMENTS OR GROUPS OF
03:08PM 22 PEOPLE. YEAH, OVERALL, THE DRUG WAS THE SAME. BUT THEN TO
03:08PM 23 SAY THAT THEY'RE ALL WORKING TOGETHER UNDER THAT GUISE, I
03:08PM 24 DON'T THINK THE EVIDENCE SUPPORTS THAT. SO I THINK THE
03:08PM 25 MULTIPLE-CONSPIRACY CHARGE IS APPROPRIATE.

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03:08PM 1 AND I DO--AND, ALSO I THINK, AS FAR AS THE FIFTH
03:08PM 2 CIRCUIT IS CONCERNED, THAT A DEFENDANT IS ENTITLED TO AN
03:08PM 3 INSTRUCTION ON A RECOGNIZED DEFENSE FOR WHICH THERE RESTS
03:08PM 4 EVIDENCE SUFFICIENT FOR A REASONABLE JURY TO FIND IN ITS FAVOR.
03:08PM 5 AND THAT'S THE U.S. VERSUS MATA, IRONICALLY, 491 F.3D 237,
03:08PM 6 CITING U.S. VERSUS MASERATI, 1 F.3D 330. SO I THINK THE
03:08PM 7 EVIDENCE DOES SUPPORT A REASONABLE JURY TO FIND THAT. AND SO
03:09PM 8 WE DO THINK THE CHARGE IS APPROPRIATE--OR THE INSTRUCTION IS
03:09PM 9 APPROPRIATE.

03:09PM 10 THE COURT: OKAY.

03:09PM 11 WHAT ELSE?

03:09PM 12 MR. WHALEN: AND THE ONLY OTHER REQUEST THAT I
03:09PM 13 WOULD MAKE--AND I PREFACE THE REQUEST WITH THE KNOWLEDGE
03:09PM 14 AND UNDERSTANDING THAT IN U.S. VERSUS MATA, 491 F.3D 237, THE
03:09PM 15 FIFTH CIRCUIT HAS SAID THIS INSTRUCTION IS NO LONGER NECESSARY
03:09PM 16 BECAUSE THE CONSPIRACY INSTRUCTION--PATTERN INSTRUCTION COVERS
03:09PM 17 IT. BUT WE WOULD REQUEST THAT THE COURT INCLUDE IN THE
03:09PM 18 CONSPIRACY SECTION THAT IF YOU FIND THAT MR. BOWEN WAS ONLY
03:09PM 19 INVOLVED IN A BUYER-SELLER RELATIONSHIP, THEN HE CANNOT
03:09PM 20 BE FOUND GUILTY OF CONSPIRACY. AND WE WOULD REQUEST THAT
03:10PM 21 INSTRUCTION, BUT RECOGNIZE THE FIFTH CIRCUIT HAS--

03:10PM 22 THE COURT: DID YOU PUT THAT--

03:10PM 23 MR. WHALEN: I DID NOT. I FOUND THIS LATE. BUT
03:10PM 24 I ONLY BRING IT UP BECAUSE I'M GOING TO MAKE THE REQUEST, BUT
03:10PM 25 RECOGNIZE THE FIFTH CIRCUIT HAS SAID IT'S NOT NECESSARY TO GIVE

03:10PM 1 IT.

03:10PM 2 THE COURT: OKAY.

03:10PM 3 MR. WHALEN: SO...

03:10PM 4 THE COURT: AND YOU ARE ASKING ME TO SAY "IF YOU
03:10PM 5 FIND" WHAT?

03:10PM 6 MR. WHALEN: THAT MR. BOWEN WAS ONLY INVOLVED IN A
03:10PM 7 BUYER-SELLER RELATIONSHIP, THEN HE CANNOT BE FOUND GUILTY OF
03:10PM 8 CONSPIRACY.

03:11PM 9 THE COURT: AND WHAT'S THE CASE CITE FROM THE FIFTH
03:11PM 10 CIRCUIT?

03:11PM 11 MR. WHALEN: 491 F.3D 237, U.S. VERSUS MATA. AND
03:11PM 12 IT'S IN--

03:11PM 13 THE COURT: 237? NOT 297?

03:11PM 14 MR. WHALEN: 237. I'M SORRY.

03:11PM 15 THE COURT: OKAY. STILL THE MATA CASE?

03:11PM 16 MR. WHALEN: STILL THE MATA CASE. AND IT'S HEADNOTE
03:11PM 17 NUMBER 7.

03:11PM 18 THE COURT: OKAY.

03:11PM 19 MR. WHALEN: AND THAT'S ALL I HAVE AS FAR AS THE
03:11PM 20 CHARGE GOES, YOUR HONOR.

03:11PM 21 THE COURT: OKAY. THANK YOU.

03:11PM 22 MR. KEMP?

03:11PM 23 MR. KEMP: NOTHING FURTHER FROM ME, YOUR HONOR.

03:11PM 24 THE COURT: OKAY.

03:11PM 25 MR. PETRAZIO: I THINK THE CHARGE IS FINE AS IT'S

03:11PM 1 WRITTEN.

03:11PM 2 THE COURT: OKAY. THANK YOU.

03:11PM 3 LET ME GO LOOK AT THESE CASES YOU'VE GIVEN ME.

03:12PM 4 WHAT WAS THE CASE YOU CITED, MR. GONZALEZ, ON
03:12PM 5 MULTIPLE CONSPIRACIES?

03:12PM 6 MR. GONZALEZ: I HAVE SEVERAL, YOUR HONOR. IF I
03:12PM 7 COULD, THE FIFTH CIRCUIT CASE IS UNITED STATES VERSUS WILSON,
03:12PM 8 116 F.3D 1066, SPECIFICALLY 1075 AND 1076.

03:12PM 9 ALSO, UNITED STATES VERSUS SHORTER, S-H-O-R-T-E-R,
03:12PM 10 AND THAT IS A SEVENTH CIRCUIT CASE. AND THAT'S 54 F.3D 1248,
03:12PM 11 SPECIFICALLY 1255. I'M SORRY. 1254 AND 1255.

03:12PM 12 AND THEN UNITED STATES VERSUS MALDONADO-RIVERA, AND
03:13PM 13 THAT'S AT 922 F.2D 934. AND THAT'S A SECOND CIRCUIT CASE, YOUR
03:13PM 14 HONOR, BUT BASICALLY SPEAKING OF THE THREE SPECIFIC FACTORS
03:13PM 15 THAT THE COURT SHOULD LOOK AT TO DETERMINE WHETHER IT'S A
03:13PM 16 SINGLE CONSPIRACY OR MULTIPLE CONSPIRACIES. THOSE CIRCUITS
03:13PM 17 HAVE LOOKED AT THAT.

03:13PM 18 THE COURT: OKAY.

03:13PM 19 MR. GONZALEZ: THANK YOU.

03:13PM 20 AND IN REGARDS TO THE OTHER INSTRUCTION, YOUR HONOR,
03:13PM 21 OBVIOUSLY DEFENSE COUNSEL HAS ACKNOWLEDGED THAT THE FIFTH
03:13PM 22 CIRCUIT HAS INDICATED THAT IT'S NOT NECESSARY. OBVIOUSLY,
03:13PM 23 WE WOULD ARGUE THAT IT'S NOT NECESSARY AND THAT IT SHOULDN'T
03:13PM 24 BE INCLUDED BECAUSE THIS IS A CONSPIRACY AND AN END-USER
03:13PM 25 DEFINITION WOULD NOT BE NECESSARY.

03:13PM 1 THE COURT: OKAY.

03:13PM 2 MR. WHALEN: WHAT IS THE CITE FOR THAT WILSON CASE,
03:13PM 3 AGAIN?

03:13PM 4 MR. GONZALEZ: 116 F.3D 1066.

03:14PM 5 MR. WHALEN: 160?

03:14PM 6 MR. GONZALEZ: 116.

03:14PM 7 MS. BATSON: YOUR HONOR, AS FAR AS THE BUYER-SELLER
03:14PM 8 INSTRUCTION, IN A CASE BEFORE THIS COURT, UNITED STATES VERSUS
03:14PM 9 KEYON MITCHELL--UNFORTUNATELY, I DO NOT HAVE THE CITE, BUT YOU
03:14PM 10 WERE THE JUDGE ON THAT--SINCE COUNSEL DID RAISE THE BUYER-
03:14PM 11 SELLER ARGUMENT BEFORE THIS COURT, WHAT YOU RULED BACK THEN WAS
03:14PM 12 THAT ONCE YOU MADE A DETERMINATION THAT A CONSPIRACY EXISTED,
03:14PM 13 THERE COULD NOT BE A SIMPLE BUYER-SELLER RELATIONSHIP BECAUSE
03:14PM 14 OF THE AGREEMENTS THAT WERE MADE.

03:14PM 15 THE COURT: IN OTHER WORDS, ON THE RULE 29 MOTIONS?

03:14PM 16 MS. BATSON: YES, YES. AND YOU DID NOT GIVE THE
03:14PM 17 INSTRUCTION.

03:14PM 18 THE COURT: OKAY.

03:15PM 19 WELL, I NEED TO GO LOOK AT THESE CASES. I DON'T
03:15PM 20 KNOW IF YOU WANT TO WAIT OR JUST COME BACK TOMORROW MORNING,
03:15PM 21 OR WHAT YOU WOULD LIKE TO DO.

03:15PM 22 MS. BATSON: WE'LL WAIT, YOUR HONOR.

03:15PM 23 MR. PETRAZIO: WE'LL WAIT.

03:15PM 24 THE COURT: YOU WANT TO WAIT? OKAY. ALL RIGHT.
03:15PM 25 AND THEN AFTER I LOOK AT THESE CASES WE'LL TALK ABOUT TIME

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03:15PM 1 FOR FINAL ARGUMENTS.

03:15PM 2 LET ME GO BACK THERE.

03:16PM 3 [RECESS]

04:46PM 4 [OPEN COURT, NEITHER THE DEFENDANTS NOR THE JURY ARE
04:46PM 5 PRESENT]

04:46PM 6 THE COURT: I'VE LOOKED AT A LOT OF CASES. MOST
04:46PM 7 OF THEM ARE FIFTH CIRCUIT CASES, BUT ALSO FROM TWO OF THE OTHER
04:47PM 8 CIRCUITS. I LOOKED AT THE CASES THAT MR. GONZALEZ CITED, AND
04:47PM 9 I LOOKED AT A COUPLE OF OTHERS, MAYBE THREE OTHERS.

04:47PM 10 FIRST OF ALL, ON THE BUYER-SELLER ISSUE, I DID LOOK
04:47PM 11 AT THE MASERATI CASE AND THE MATA CASE, BOTH FIFTH CIRCUIT
04:47PM 12 CASES THAT HOLD THAT WHILE IT IS TRUE THAT A BUYER-SELLER
04:47PM 13 RELATIONSHIP WITHOUT MORE WILL NOT PROVE A CONSPIRACY, THE
04:48PM 14 FIFTH CIRCUIT HAS HELD THAT THE PATTERN JURY INSTRUCTION UNDER
04:48PM 15 2.89 ADEQUATELY COVERS INSTRUCTION ON DRUG CONSPIRACIES. AND
04:48PM 16 THAT INSTRUCTION COVERS THE PROPOSED BUYER-SELLER ISSUE. THAT
04:49PM 17 COMES ALSO FROM THE FIFTH CIRCUIT'S CLARK CASE, WHICH IS A
04:49PM 18 2008 CASE, WHICH IS MORE RECENT THAN EITHER MASERATI OR MATA.
04:49PM 19 AND SO THE FIFTH CIRCUIT HAS HELD THAT THERE'S NO ERROR IN
04:49PM 20 REFUSING TO GIVE A SEPARATE INSTRUCTION ON BUYER-SELLER.

04:49PM 21 SO, MR. WHALEN, I'M NOT GOING TO GIVE ANOTHER
04:49PM 22 INSTRUCTION ON BUYER-SELLER.

04:49PM 23 MR. WHALEN: I UNDERSTAND, YOUR HONOR. I RECOGNIZE
04:49PM 24 THE FIFTH CIRCUIT PRECEDENT.

04:49PM 25 THE COURT: OKAY.

ON THE MULTIPLE-CONSPIRACIES ISSUE, I LOOKED AT A
COUPLE OF CASES OTHER THAN THE ONES THAT MR. GONZALEZ CITED.

THE FIRST ONE WAS UNITED STATES VERSUS ERWIN, CITED
AT 793 F.2D 656. IN THAT CASE, THE DEFENDANT REQUESTED THE
COURT GIVE AN INSTRUCTION ON MULTIPLE CONSPIRACIES. THE COURT
REFUSED. THE FIFTH CIRCUIT SAID THAT WHETHER THE EVIDENCE
SHOWS ONE OR MULTIPLE CONSPIRACIES IS A FACT QUESTION FOR THE
JURY. OF COURSE, THE EVIDENCE MUST ARGUABLY RAISE A QUESTION
OF MULTIPLE CONSPIRACIES IN ORDER FOR THE DEFENDANT TO BE
ENTITLED TO AN INSTRUCTION ON THAT THEORY. THE FIFTH CIRCUIT
SAID IT'S ERROR TO REFUSE A REQUEST TO INSTRUCT ON MULTIPLE
CONSPIRACIES IF THAT THEORY HAS ANY EVIDENTIARY SUPPORT
WHATSOEVER. THE FIFTH CIRCUIT THEN LISTED FIVE CONSIDERATIONS.
THEY HAVE TO DO WITH TIME FRAME, LOCATIONS OF THE EVENTS
INVOLVED IN THE CONSPIRACY, PERSONS ACTING AS COCONSPIRATORS,
THE STATUTORY OFFENSES CHARGED IN THE INDICTMENT--OF COURSE,
HERE WE ONLY HAVE THE CONSPIRACY CHARGE--AND ANY OTHER
DESCRIPTION OF THE OFFENSE. SO...

THE TIME FRAME HERE IS ALMOST FOUR AND A HALF YEARS,
AS ALLEGED IN THE INDICTMENT. SO THERE'S A BROAD TIME FRAME.

THE LOCATIONS? WELL, IT'S PRETTY MUCH IN THE DALLAS
AREA, AS WELL AS IN COLLIN AND GRAYSON COUNTIES. I DON'T
REMEMBER IF THERE'S ANYTHING IN DENTON COUNTY. THERE MAY HAVE
BEEN SOME OF IT IN TARRANT COUNTY, BECAUSE THERE WAS A HOUSE
IN GRAND PRAIRIE. SO IT'S IN THE DALLAS-FORT WORTH AREA AND

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04:54PM 1 NORTH.

04:54PM 2 PERSONS ACTING AS COCONSPIRATORS. THERE'S 34 OF
04:54PM 3 THEM ACCUSED. ALL HAVE PLED GUILTY EXCEPT FOR THESE THREE.
04:54PM 4 SO PRESUMABLY THE OTHER 31 CONSPIRED. THEY'VE ADMITTED IT.
04:54PM 5 I'M NOT SURE HOW THAT HELPS THE COURT ANALYZE WHETHER TO GIVE
04:54PM 6 THE INSTRUCTION, THOUGH.

04:54PM 7 THERE ARE NO OTHER OFFENSES CHARGED IN THE INDICTMENT
04:55PM 8 OTHER THAN CONSPIRACY.

04:55PM 9 DESCRIPTION OF THE OFFENSE. THAT'S THE FIFTH FACTOR
04:55PM 10 IN THE ERWIN CASE. HERE WE HAVE EVIDENCE THAT JUAN CARLOS VEGA
04:55PM 11 KNEW RAMIRO CAZARES AND WHERE CAZARES GOT HIS DRUGS, WHICH WAS
04:55PM 12 FROM PRIMO. VEGA SAID HE WAS A RUNNER FOR CAZARES. HE HAD A
04:55PM 13 CAR THAT HAD HIDDEN TRAPS. AND THEN CAZARES SAYS HE KNOWS VEGA.
04:56PM 14 HE CALLED VEGA TO PICK UP DRUGS AND HE COOKED METH WITH VEGA.
04:56PM 15 AND THEN THERE WAS THE RECORDED PHONE CALL WHERE THEY TALKED
04:56PM 16 ABOUT COOKING METH.

04:56PM 17 OKAY. WITH RESPECT TO TIMOTHY BOWEN, WHO HAS
04:56PM 18 REQUESTED THIS CHARGE, FERNANDO PERALES, THE OTHER SUPPLIER
04:57PM 19 BESIDES ANDY NGUYEN, TESTIFIED THAT HE SOLD TO BOWEN. TREY
04:57PM 20 TIBBS WAS WITH BOWEN. BOWEN AND TIBBS PICKED UP DRUGS TOGETHER.
04:57PM 21 THERE'S EVIDENCE OF A RELATIONSHIP AMONG BOWEN, TIBBS AND
04:57PM 22 PERALES, THE SUPPLIER. DOGG WAS HIS NICKNAME. AND THERE'S
04:57PM 23 EVIDENCE OF A RELATIONSHIP BETWEEN HOUSE AND HIS PARTNER,
04:58PM 24 SALAZAR, AND BOWEN. SALAZAR TOLD HOUSE HE WAS SELLING TO
04:58PM 25 BOWEN. BOWEN AND TIBBS POOLED THEIR MONEY TO BUY DRUGS.

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04:58PM 1 AND MARIE DAVILA GOT DRUGS FROM BOWEN. SO THERE ARE SEVERAL
04:58PM 2 OTHER ALLEGED COCONSPIRATORS, SOME OF WHICH--MANY OF WHICH
04:58PM 3 HAVE PLED GUILTY, WHO TESTIFIED ABOUT THEIR RELATIONSHIP
04:58PM 4 WITH BOWEN; GETTING DRUGS FROM HIM, SELLING DRUGS TO HIM AND
04:59PM 5 BOWEN DISTRIBUTING DRUGS. AND A LOT OF THESE WITNESSES WERE
04:59PM 6 DISTRIBUTORS. SOME WERE SELLERS, SOME WERE DISTRIBUTORS,
04:59PM 7 BUT THEY WERE ALL INVOLVED IN THE SCHEME TO DISTRIBUTE
04:59PM 8 METHAMPHETAMINE.

04:59PM 9 AND THEN THERE ARE UNINDICTED PERSONS WHO WERE DOING
04:59PM 10 BUSINESS WITH BOWEN, SUCH AS CARLOS CABRALES AND MARIE DAVILA
04:59PM 11 AND KISHA BOWEN.

05:00PM 12 SO THE FIFTH CIRCUIT SAID IN THAT FIRST CASE, THE
05:00PM 13 ERWIN CASE, THAT BASICALLY BECAUSE THERE WERE--EVEN THOUGH--
05:00PM 14 LET'S SEE. EVEN THOUGH THERE WERE TWO GROUPS OPERATING IN THE
05:00PM 15 SAME TIME PERIOD IN CLOSE PROXIMITY TO EACH OTHER, COOPERATING
05:00PM 16 WITH EACH OTHER, THEIR TECHNIQUES OF DISTRIBUTION WERE IDENTICAL,
05:00PM 17 THERE WAS NO EVIDENCE OF INTERGROUP COMPETITION. THEY SUPPLIED
05:00PM 18 EACH OTHER. THE COURT SAID, "WHILE THE LATTER EVIDENCE WOULD
05:00PM 19 WARRANT OUR AFFIRMING A JURY FINDING OF A SINGLE CONSPIRACY,
05:01PM 20 IT'S NOT SO OVERWHELMING THAT THE COURT COULD DECIDE THE
05:01PM 21 QUESTION AS A MATTER OF LAW." AND THE COURT CONCLUDED THAT THE
05:01PM 22 DEFENDANT WAS ENTITLED TO A MULTIPLE-CONSPIRACY INSTRUCTION.
05:01PM 23 SO THERE'S THAT CASE THAT WOULD SEEM TO FAVOR GRANTING THE
05:01PM 24 INSTRUCTION, I GUESS.

05:01PM 25 THEN THERE'S THE '91 CASE OF U.S. VERSUS ELLENDER,

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05:01PM 1 947 F.2D 748. THAT WASN'T A REQUEST FOR A JURY INSTRUCTION.
05:01PM 2 IT WAS AN ARGUMENT THAT THE EVIDENCE DIDN'T SUPPORT THE JURY'S
05:01PM 3 FINDING. AGAIN THEY LOOKED AT THE FIVE FACTORS THAT WERE IN
05:02PM 4 ERWIN, WHICH DIFFER FROM THE THREE FACTORS THAT MR. GONZALEZ
05:02PM 5 TALKED ABOUT THAT ARE IN OTHER CASES. THE FIVE FACTORS BEING
05:02PM 6 TIME FRAME, LOCATION OF THE EVENTS CHARGED AS PART OF THE
05:02PM 7 CONSPIRACY, THE PERSONS ACTING AS COCONSPIRATORS, THE STATUTORY
05:02PM 8 OFFENSES CHARGED IN THE INDICTMENT, AND THE OVERT ACTS OR OTHER
05:02PM 9 DESCRIPTION OF THE OFFENSE. AND THE COURT SIMPLY FOUND THAT
05:02PM 10 THE EVIDENCE WAS SUFFICIENT FOR A RATIONAL JURY TO CONCLUDE
05:02PM 11 THAT THE GOVERNMENT HAD ESTABLISHED THE ELEMENTS OF A SINGLE
05:03PM 12 CONSPIRACY. AGAIN, THAT'S NOT A REQUEST FOR A JURY INSTRUCTION;
05:03PM 13 THAT'S A CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE AT THE
05:03PM 14 CONCLUSION OF THE CASE, IS THE WAY I READ THAT CASE.

05:03PM 15 BUT BOTH ERWIN AND ELLENDER HAVE A FIVE-FACTOR TEST.
05:03PM 16 THEN I GOT TO ANOTHER CASE, STOWELL, U.S. VERSUS
05:03PM 17 STOWELL, 947 F.2D 1251. THAT'S THE THIRD CASE THAT I SIMPLY
05:03PM 18 LOOKED AT ON MY OWN THAT WE DIDN'T DISCUSS EARLIER OUT HERE IN
05:03PM 19 THE COURTROOM. THAT'S ALSO A FIFTH CIRCUIT CASE. THE QUESTION
05:04PM 20 IS WHETHER THERE'S ANY EVIDENCE TO SUPPORT THE ISSUANCE OF THE
05:04PM 21 MULTIPLE CONSPIRACIES CHARGED. AND IN THAT CASE, THERE WAS A
05:04PM 22 REQUEST FOR THE INSTRUCTION. APPARENTLY, THE CASE AGENT
05:04PM 23 TESTIFIED THAT THE ROLE OF ONE OF THE DEFENDANTS WAS AS A
05:04PM 24 SUPPLIER. THE DEFENDANT WAS JIMMY WOOD. HE WAS A SUPPLIER
05:04PM 25 OF MARIJUANA. HE DIDN'T PARTICIPATE IN ANY LOADING OR

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05:04PM 1 TRANSPORTATION ACTIVITIES. THE COURT SAID, "THUS THERE WAS
05:04PM 2 SOME EVIDENCE TENDING TO SHOW THAT WOOD PARTICIPATED ONLY IN
05:04PM 3 A CONSPIRACY TO IMPORT AND NOT A CONSPIRACY TO POSSESS WITH
05:04PM 4 INTENT TO DISTRIBUTE. THEREFORE, IT WAS ERROR FOR THE COURT
05:05PM 5 TO REFUSE TO INSTRUCT ON MULTIPLE CONSPIRACIES."

05:05PM 6 HERE, WE HAVE BOWEN BUYING--EVIDENCE OF HIM BUYING
05:05PM 7 AND SELLING. I GUESS HE'S BOTH A SUPPLIER AND A DISTRIBUTOR.
05:05PM 8 WAS HE SELLING ONLY TO END USERS? DO Y'ALL REMEMBER? OR
05:05PM 9 WAS HE SELLING QUANTITIES THAT OTHERS WOULD REDISTRIBUTE?

05:05PM 10 MR. WHALEN: YOUR HONOR, I DON'T THINK THERE'S
05:05PM 11 ANY TESTIMONY IN THE RECORD CONCERNING WHAT HE DID WITH ANY
05:06PM 12 SUPPOSED METHAMPHETAMINE.

05:06PM 13 THE COURT: DO YOU RECALL?

05:06PM 14 MS. BATSON: YOUR HONOR, I BELIEVE IT WAS MS. DAVILA
05:06PM 15 WHO TESTIFIED THAT AFTER SHE AND DEFENDANT BOWEN RETURNED FROM
05:06PM 16 OBTAINING THE METHAMPHETAMINE, THAT THEY WOULD REWEIGH IT AND
05:06PM 17 REPACKAGE IT AND THEN THEY WOULD CALL THE CUSTOMERS AND THEY
05:06PM 18 WOULD COME OVER. AND THEN IF THERE WAS ANY OTHER--I THINK THIS
05:06PM 19 WAS MS. DAVILA--IF THERE WAS ANY OTHER METHAMPHETAMINE LEFT,
05:06PM 20 THEN TIM BOWEN WOULD REDISTRIBUTE IT AND FILL THE ORDERS WHEN
05:06PM 21 THE PEOPLE CALLED.

05:06PM 22 BUT THEN SHE ALSO TESTIFIED THAT WHEN --ACTUALLY, I
05:06PM 23 THINK IT WAS MR. CABRALES. HE TESTIFIED THAT MARIE DAVILA AND
05:06PM 24 TIM BOWEN GAVE HIM SOME METHAMPHETAMINE FOR THE USE OF HIS CAR.

05:07PM 25 THE COURT: YEAH.

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05:07PM 1 MS. BATSON: SO IN THAT CASE MS. DAVILA WOULD
05:07PM 2 REDISTRIBUTE. NOT FOR PROFIT, BUT DISTRIBUTION IS SHARING,
05:07PM 3 JUST GIVING IT TO ANOTHER PERSON.

05:07PM 4 THE COURT: BOWEN IS BUYING METHAMPHETAMINE, HE'S
05:07PM 5 COMPLAINING ABOUT THE PRICE THAT DOGG IS CHARGING HIM--FERNANDO
05:07PM 6 PERALES--AND TRYING TO GET A BETTER PRICE.

05:07PM 7 MS. BATSON: YOUR HONOR, IF WE CAN BACK UP FROM
05:07PM 8 THAT, WE KNOW THAT HE WAS GETTING FROM DEFENDANT SALAZAR.

05:07PM 9 THE COURT: YES.

05:07PM 10 MS. BATSON: AND THEN WHEN SALAZAR WENT TO JAIL,
05:07PM 11 HE NEEDED TO FIND ANOTHER SOURCE OF SUPPLY, AND THEN, YES,
05:07PM 12 HE STARTED GOING TO DOGG.

05:07PM 13 THE COURT: WELL, IN THIS STOWELL CASE, THE FIFTH
05:07PM 14 CIRCUIT SEPARATED CONSPIRACY TO IMPORT FROM CONSPIRACY TO
05:07PM 15 POSSESS WITH INTENT TO DISTRIBUTE. I GUESS YOU WOULD HAVE
05:08PM 16 HAD TO KNOW MORE DETAILS ABOUT THE CASE. IT LOOKS LIKE
05:08PM 17 THERE'S--WELL, I DON'T KNOW. THEY JUST SAID THERE WAS SOME
05:08PM 18 EVIDENCE THAT HE PARTICIPATED ONLY IN A CONSPIRACY TO IMPORT
05:08PM 19 AND NOT TO POSSESS WITH INTENT TO DISTRIBUTE. THE CHARGE IN
05:08PM 20 THE CASE WAS CONSPIRING TO POSSESS WITH INTENT TO DISTRIBUTE.
05:08PM 21 SO APPARENTLY THE DEFENDANT IN THE STOWELL CASE WASN'T A
05:08PM 22 DISTRIBUTOR. OF COURSE, IF YOU SUPPLY MARIJUANA TO OTHERS,
05:08PM 23 AREN'T YOU DISTRIBUTING? I DON'T KNOW. I CAN'T EXPLAIN IT.

05:09PM 24 OKAY. THEN I WENT TO THE CASES THAT MR. GONZALEZ
05:09PM 25 CITED. OKAY. THE WILSON CASE. LET'S SEE. I THINK THE WILSON

05:09PM 1 CASE WAS A RULE 29 MOTION. I DON'T THINK IT WAS A REQUEST TO
05:09PM 2 INCLUDE THE INSTRUCTION IN THE JURY INSTRUCTIONS, THE MULTIPLE-
05:09PM 3 CONSPIRACY INSTRUCTION, BECAUSE AT HEADNOTE 8, THE FIFTH
05:09PM 4 CIRCUIT WRITES, "NEXT, THE DEFENDANTS ARGUE THAT THERE IS A
05:09PM 5 PREJUDICIAL VARIANCE BETWEEN THE INDICTMENT, WHICH CHARGES A
05:09PM 6 SINGLE CONSPIRACY, AND THE PROOF AT TRIAL," WHICH THEY SUGGEST
05:09PM 7 TENDS TO SHOW THE EXISTENCE OF MULTIPLE CONSPIRACIES. OKAY.

05:10PM 8 THEN WE GET TO THE THREE-FACTOR TEST. AND WILSON IS
05:10PM 9 A 1997 CASE. IT CAME AFTER ERWIN, ELLENDER AND STOWELL. AND
05:10PM 10 THERE'S THIS THREE-FACTOR TEST: EXISTENCE OF A COMMON GOAL,
05:10PM 11 NATURE OF THE SCHEME, OVERLAPPING OF PARTICIPANTS. THE COURT
05:10PM 12 SAID, "THE GOAL OF SELLING COCAINE FOR PROFIT SATISFIES THE
05:10PM 13 COMMON-GOAL REQUIREMENT." SO BY THAT TEST--UNDER THAT FACTOR,
05:10PM 14 ALL OF THESE PEOPLE WERE--WELL, MANY OF THESE PEOPLE WERE
05:10PM 15 SELLING COCAINE OR DISTRIBUTING COCAINE FOR PROFIT. SOME OF
05:10PM 16 THEM WERE USERS, LIKE DAVILA. I DON'T KNOW WHO ELSE. MELISSA
05:11PM 17 STEWART MAYBE. OH, I'M SORRY. DID I SAY "COCAINE"?

05:11PM 18 MS. BATSON: YES, SIR.

05:11PM 19 THE COURT: WELL, LET'S SEE. WHAT KIND OF CASE WAS
05:11PM 20 THIS? OKAY. YEAH. WELL, I WAS READING FROM THIS WILSON CASE.
05:11PM 21 "THE GOAL OF SELLING COCAINE FOR PROFIT SATISFIES THE COMMON
05:11PM 22 GOAL." LIKewise, THE GOAL OF SELLING METHAMPHETAMINE FOR
05:11PM 23 PROFIT SATISFIES THE COMMON GOAL.

05:11PM 24 DID YOU WANT TO SAY SOMETHING?

05:11PM 25 MR. WHALEN: JUDGE, AS FAR AS THE WILSON CASE GOES,

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05:11PM 1 IT'S DISTINGUISHABLE IN THE SENSE THAT THE PARTICIPANTS IN THAT
05:11PM 2 WERE PART OF A CRIMINAL STREET GANG. I THINK THEY WERE, YOU
05:11PM 3 KNOW, EITHER SOME TYPE OF GANG WHERE THEY'RE ALL AFFILIATED
05:11PM 4 WITH EACH OTHER THROUGH THIS COMMON BOND OF BEING IN A GANG.
05:12PM 5 I THINK IT IS A LITTLE BIT DIFFERENT.

05:12PM 6 AND THEN I WOULD SAY, AS FAR AS THE FIVE-FACTOR
05:12PM 7 TEST, IT'S STILL THE ANALYSIS THAT I THINK THE FIFTH CIRCUIT
05:12PM 8 IS USING, BECAUSE IN THE CASE UNITED STATES VERSUS DUFFY, WHERE
05:12PM 9 I ARGUED IT, WE USED THAT FIVE-FACTOR--THEY CONSIDERED THE
05:12PM 10 FIVE-FACTOR TEST BECAUSE OUR ARGUMENT AT TRIAL WAS THAT THEY
05:12PM 11 PROVED A BANK-ROBBERY CASE WHEN THEY ROBBED MULTIPLE BANKS,
05:12PM 12 CHARGED THEM SEPARATELY, AND WE ARGUED THAT THEY WERE A SINGLE
05:12PM 13 CONSPIRACY, AND THEY USED THE FIVE-FACTOR TEST AND FOUND THAT
05:12PM 14 EACH BANK ROBBERY WAS A SEPARATE OFFENSE. SO THE FIVE-FACTOR
05:12PM 15 TEST IS STILL BEING UTILIZED BY THE FIFTH CIRCUIT.

05:12PM 16 THE COURT: DO YOU HAVE AN ARGUMENT AS TO WHEN YOU
05:12PM 17 USE THE FIVE-FACTOR TEST AND WHEN YOU USE THE THREE-FACTOR
05:12PM 18 TEST? DO YOU KNOW?

05:12PM 19 MR. WHALEN: IN ALL MY RESEARCH, I DIDN'T KNOW THAT
05:12PM 20 THEY EVEN HAD A THREE-FACTOR TEST. BECAUSE IN OUR PARTICULAR
05:13PM 21 CASE WE SAW THE FIVE-FACTOR TEST AND NOBODY EVER MENTIONED
05:13PM 22 THERE WAS A THREE-FACTOR TEST IN THE FIFTH CIRCUIT WHEN WE
05:13PM 23 ARGUED. SO...

05:13PM 24 THE COURT: OKAY. WELL, THE FIVE-FACTOR TEST
05:13PM 25 WAS USED IN ERWIN, AND THAT WAS BASED UPON A REQUEST BY

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05:13PM 1 THE DEFENDANT TO INCLUDE MULTIPLE CONSPIRACIES IN THE JURY
05:13PM 2 INSTRUCTIONS. IT WASN'T A RULE 29-MOTION-TYPE ARGUMENT, IT
05:13PM 3 WASN'T AN ARGUMENT AFTER THE JURY'S VERDICT CAME IN SAYING IT
05:13PM 4 WAS INSUFFICIENT EVIDENCE; IT WAS A CHARGE-CONFERENCE-TYPE
05:13PM 5 ARGUMENT.

05:13PM 6 OKAY. COMMON GOAL. SELLING METHAMPHETAMINE FOR
05:13PM 7 PROFIT SATISFIES THE COMMON GOAL.

05:13PM 8 NATURE OF THE SCHEME. THE FIFTH CIRCUIT SAID--I'M
05:13PM 9 BACK ON WILSON--"WITH RESPECT TO THE NATURE OF THE SCHEME,
05:13PM 10 WE LOOK AT THE DEGREE OF INTERDEPENDENCE OF THE ACTIONS OF
05:14PM 11 MEMBERS." INTERDEPENDENCE.

05:14PM 12 MS. BATSON OR MR. GONZALEZ, ARE THEY INTERDEPENDENT,
05:14PM 13 OR ARE THEY ALL WORKING FOR THEIR OWN INTERESTS HERE, SELLING
05:14PM 14 METHAMPHETAMINE? I MEAN, THEY'RE INTERDEPENDENT IN THE SENSE
05:14PM 15 THAT SOME ARE SELLING TO OTHERS IN THE CONSPIRACY AND BUYING
05:14PM 16 FROM OTHERS IN THE CONSPIRACY.

05:14PM 17 MS. BATSON: YOUR HONOR, YES, WE BELIEVE THAT THEY
05:14PM 18 WERE INTERDEPENDENT. AND ONE OF THE WAYS--

05:14PM 19 THE COURT: WELL--

05:14PM 20 MS. BATSON: GO AHEAD.

05:14PM 21 THE COURT: --ONE OF THE WAYS IS THAT TREY TIBBS AND
05:14PM 22 MR. BOWEN POOLED THEIR MONEY--

05:14PM 23 MS. BATSON: YES.

05:14PM 24 THE COURT: --TO BUY--

05:14PM 25 MS. BATSON: AND THEY RELIED ON DRIVERS IN ORDER

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05:14PM 1 TO GET THEM DOWN TO PURCHASE THE METHAMPHETAMINE FROM DOGG,
05:15PM 2 BECAUSE THEY DIDN'T HAVE A VEHICLE. SO THEY DID RELY ON ONE
05:15PM 3 ANOTHER.

05:15PM 4 AND THEN THERE WAS ALSO TESTIMONY, YOUR HONOR, THAT
05:15PM 5 IF ONE PERSON WAS OUT OF METHAMPHETAMINE, THEY WENT TO ANOTHER
05:15PM 6 PERSON TO GET THE METHAMPHETAMINE. AND SO THEY WERE DEPENDENT
05:15PM 7 ON EACH OTHER, AS WELL, TO COVER EACH OTHER'S CUSTOMERS.

05:15PM 8 THE COURT: MR. WHALEN?

05:15PM 9 MR. WHALEN: OBVIOUSLY, I DISAGREE WITH THAT,
05:15PM 10 BECAUSE I THINK IF YOU LOOK AT THE TESTIMONY, THAT THERE'S SOME
05:15PM 11 SUGGESTION THAT MR. BOWEN WAS DEALING WITH PERALES PRIOR TO
05:15PM 12 ENGAGING MR. TIBBS IN NEGOTIATING A LOWER PRICE. AND SO HE
05:15PM 13 WAS--IF YOU BELIEVE THAT TESTIMONY, THEN HE'S ENGAGING IN HIS
05:15PM 14 OWN ACTIVITY WITHOUT ANY HELP FROM MR. TIBBS. THERE'S NOTHING
05:15PM 15 TO SUGGEST HE WOULDN'T HAVE CONTINUED ON HIS OWN IF MR. TIBBS
05:15PM 16 HADN'T--HE DIDN'T NEED MR. TIBBS TO CONTINUE HIS ACTIVITIES.

05:15PM 17 THE COURT: PERALES?

05:15PM 18 MR. WHALEN: I MEAN MR. BOWEN. SO HE'S NOT
05:15PM 19 DEPENDENT ON MR. TIBBS.

05:15PM 20 THE COURT: BUT THEY POOLED THEIR MONEY.

05:16PM 21 MR. WHALEN: AT THAT TIME. BUT I THINK PRIOR TO
05:16PM 22 THAT THEY WEREN'T. SO I THINK IF YOU LOOK AT THE WHOLE
05:16PM 23 RELATIONSHIP, THEY'RE NOT INTERDEPENDENT ON EACH OTHER BECAUSE
05:16PM 24 THEN AFTER THEY PURCHASED IT AND SPLIT IT UP, THEY WENT THEIR
05:16PM 25 SEPARATE WAYS. SO HE WASN'T DEPENDENT ON HIM TO SELL ANY

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05:16PM 1 ADDITIONAL PRODUCT OR MAKE ANY PROFIT OFF OF THAT. SO THEY
05:16PM 2 WERE NOT INTERDEPENDENT ON EACH OTHER. AND I THINK THAT THE
05:16PM 3 ISSUE BECOMES--I THINK YOU CAN LOOK AT IT FROM TWO DIFFERENT
05:16PM 4 PERSPECTIVES, IN TWO DIFFERENT WAYS. I THINK THAT THEN LENDS
05:16PM 5 ITSELF TO THE COURT GIVING THE JURY INSTRUCTION IF THERE'S
05:16PM 6 ANY WAY YOU CAN VIEW IT. AND I THINK YOU CAN LOOK AT IT TWO
05:16PM 7 DIFFERENT WAYS AND COME TO TWO DIFFERENT CONCLUSIONS. IT'S
05:16PM 8 OVERWHELMING TO SAY IT'S JUST A SINGLE CONSPIRACY.

05:16PM 9 THE COURT: WHAT YOU WOULD LIKE TO ARGUE, MR. WHALEN,
05:16PM 10 IS THAT YOUR CLIENT WAS BASICALLY AN INDEPENDENT CONTRACTOR,
05:16PM 11 HE WAS JUST GETTING COCAINE, THEN HE WENT OUT AND HAD HIS OWN
05:17PM 12 BUSINESS?

05:17PM 13 MR. WHALEN: RIGHT.

05:17PM 14 THE COURT: HE WAS A SOLE PROPRIETOR?

05:17PM 15 MR. WHALEN: RIGHT. I THINK THAT'S A REASONABLE
05:17PM 16 INFERENCE FROM THE EVIDENCE.

05:17PM 17 MS. BATSON: YOUR HONOR, I WOULD ARGUE THAT IN THE
05:17PM 18 TESTIMONY OF KISHA BOWEN, SHE INTRODUCED TIM BOWEN TO DEFENDANT
05:17PM 19 SALAZAR. SO SHE MADE THAT INTRODUCTION. SO INTRODUCING THE
05:17PM 20 PARTICIPANTS IS ANOTHER LEVEL OF INTERDEPENDENCY.

05:17PM 21 THEN, WHEN MR. SALAZAR WENT TO JAIL, IT WAS KISHA
05:17PM 22 BOWEN AND CHRISTINA HOUSE THAT INTRODUCED TIM BOWEN TO DOGG.
05:17PM 23 AND SO THEY WERE ALL POOLING THEIR MONEY. THE TESTIMONY WAS
05:17PM 24 EVEN BEFORE TIM BOWEN MET DOGG THAT THEY WERE GOING BY AND
05:17PM 25 PICKING UP TIM BOWEN'S MONEY, DRIVING DOWN AND GETTING FROM

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05:17PM 1 DOGG. AND BECAUSE KISHA BOWEN WAS TOO PREGNANT TO MAKE THE
05:17PM 2 DRIVE, THAT'S WHEN THEY DECIDED TO MAKE THE FACE-TO-FACE
05:17PM 3 INTRODUCTION. SO DEFENDANT BOWEN WAS ALSO POOLING HIS MONEY
05:17PM 4 WITH KISHA BOWEN AND CHRISTINA HOUSE WELL BEFORE TREY TIBBS.
05:18PM 5 AND THE USE OF THE DRIVERS WAS ALL THROUGHOUT, BEFORE TREY
05:18PM 6 TIBBS AND AFTER TREY TIBBS.

05:18PM 7 THE COURT: OKAY. SO THE GOVERNMENT'S POSITION IS
05:18PM 8 THAT THERE IS EVIDENCE OF INTERDEPENDENCE AMONG BOWEN AND
05:18PM 9 OTHERS IN THE CHARGED CONSPIRACY. AND I AGREE WITH YOU.

05:18PM 10 MR. WHALEN'S POSITION IS THERE'S ALSO EVIDENCE THAT
05:18PM 11 MR. BOWEN WAS OPERATING ON HIS OWN, FOR HIS OWN INTERESTS. AND
05:18PM 12 THAT'S, TO SOME EXTENT, ALWAYS THE CASE IN A CONSPIRACY. EVERY
05:18PM 13 CONSPIRATOR WANTS TO GET SOMETHING OUT OF IT FOR HIMSELF OR
05:18PM 14 HERSELF. SO WHERE DO YOU DRAW THE LINE? IT LOOKS LIKE I LOOK
05:18PM 15 AT THE DEGREE OF INTERDEPENDENCE, OF ACTIONS OF THE MEMBERS.

05:18PM 16 MS. BATSON: WELL, YOUR HONOR, THE TESTIMONY
05:18PM 17 PRESENTED AT TRIAL SHOWED THAT TIM BOWEN NEVER CULTIVATED HIS
05:18PM 18 OWN SOURCE OF SUPPLY. HE ALWAYS HAD TO BE INTRODUCED TO A
05:19PM 19 SOURCE OF SUPPLY BY SOMEONE ELSE WHO WAS ALREADY IN THE
05:19PM 20 CONSPIRACY. SO TO SAY HE WAS ACTING FOR HIMSELF, I MEAN,
05:19PM 21 HOW COULD HE ACT FOR HIMSELF?

05:19PM 22 THE COURT: ONCE HE GOT THE SOURCE OF SUPPLY AND HE
05:19PM 23 GOT HIS TWO OUNCES OR FOUR OUNCES, OR WHATEVER, HE GOES OFF AND
05:19PM 24 SELLS TO HIS OWN CUSTOMERS.

05:19PM 25 MS. BATSON: YES, HE DOES. BUT THEY ALL DO, YOUR

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05:19PM 1 HONOR. THEY ALL GO OFF AND SELL TO THEIR OWN CUSTOMERS. EACH
05:19PM 2 ONE OF THEM HAS THEIR OWN CUSTOMER BASE. BUT STILL THEY RELIED
05:19PM 3 ON EACH OTHER TO ASSIST THEM IN THE DISTRIBUTION OF THAT
05:19PM 4 METHAMPHETAMINE. THE ACQUIRING OF IT AND THE REDISTRIBUTION.

05:19PM 5 THE COURT: I MEAN, I ASSUME HE SOLD IT.

05:19PM 6 MS. BATSON: MS. DAVILA TESTIFIED--IF YOU LOOK AT
05:19PM 7 MS. DAVILA'S TESTIMONY, SHE TESTIFIED THAT WHEN THEY REPACKAGED
05:20PM 8 IT, THEY REPACKAGED IT INTO THREE BAGS OF 7.5, SOMETHING LIKE
05:20PM 9 THAT, AND THEN THEY HAD CUSTOMERS COME AND PICK IT UP.

05:20PM 10 THE COURT: OKAY. I DIDN'T WRITE THAT DOWN.

05:20PM 11 THE THIRD FACTOR IS THE OVERLAPPING OF THE
05:20PM 12 PARTICIPANTS IN THE VARIOUS DEALINGS. AND THAT'S ALSO REFERRED
05:20PM 13 TO AS THE NEXUS AMONG PARTICIPANTS. THE FIFTH CIRCUIT SAYS,
05:20PM 14 "THERE'S NO REQUIREMENT THAT EVERY MEMBER MUST PARTICIPATE IN
05:20PM 15 EVERY TRANSACTION TO FIND A SINGLE CONSPIRACY. PARTIES WHO
05:20PM 16 KNOWINGLY PARTICIPATE WITH CORE CONSPIRATORS MAY BE MEMBERS
05:20PM 17 OF A SINGLE CONSPIRACY."

05:20PM 18 "CORE CONSPIRATORS" BEING WHOM? ANDY NGUYEN AND
05:20PM 19 FERNANDO PERALES?

05:20PM 20 MS. BATSON: AND RENE SALAZAR.

05:21PM 21 THE COURT: OKAY. AND KENNETH HOUSE?

05:21PM 22 MS. BATSON: KENNETH HOUSE, YES.

05:21PM 23 THE COURT: WAIT A MINUTE. WHERE IS TIM BOWEN ON
05:21PM 24 THIS? LET ME SEE HERE. OH, I SEE. OKAY.

05:21PM 25 MS. BATSON: YOUR HONOR, I BELIEVE WE HAVE ANOTHER

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05:21PM 1 CHART--ANOTHER FLOWCHART THAT WE COULD SHOW THE COURT.

05:21PM 2 THAT ONE WAS REALLY A ROUGH DRAFT. SO IF WE COULD--

05:21PM 3 THE COURT: WELL, THE CORE CONSPIRATORS HAVE TO BE
05:21PM 4 THE PEOPLE WHO HAVE THE METHAMPHETAMINE.

05:21PM 5 MS. BATSON: RIGHT. THE SOURCES OF SUPPLY.

05:21PM 6 THE COURT: I MEAN, THERE'S NO OPERATION HERE
05:21PM 7 WITHOUT GETTING THE METHAMPHETAMINE. AND THOSE WOULD BE
05:21PM 8 FERNANDO PERALES--I CAN'T REMEMBER--

05:21PM 9 MS. BATSON: HERE IT IS, YOUR HONOR. YOUR HONOR,
05:22PM 10 IT'S ON THE SCREEN. IF YOU WANT TO LOOK AT IT ON YOUR
05:22PM 11 COMPUTER, THAT MIGHT HELP.

05:22PM 12 THE COURT: WAS PERALES INDICTED? YES. OKAY.
05:22PM 13 PERALES, NGUYEN, SALAZAR. OKAY. SO JUST THREE FACTORS:
05:22PM 14 COMMON GOAL; NATURE OF THE SCHEME, WHICH IS INTERDEPENDENCE
05:22PM 15 AMONG MEMBERS; AND NEXUS AMONG MEMBERS, WHICH HAS TO DO WITH
05:23PM 16 PARTICIPATING WITH THE CORE CONSPIRATORS. THAT'S A FIFTH
05:23PM 17 CIRCUIT CASE.

05:23PM 18 AND THEN I LOOKED AT THE OTHER TWO CASES THAT
05:23PM 19 MR. GONZALEZ GAVE ME ON THIS ISSUE. ONE WAS A SEVENTH
05:23PM 20 CIRCUIT CASE, SHORTER. AND THE SEVENTH CIRCUIT SAID, "IF
05:23PM 21 THE DEFENDANTS JOIN TOGETHER FOR ONE COMMON DESIGN OR PURPOSE,
05:23PM 22 THERE'S A SINGLE CONSPIRACY. IN CONTRAST, IF THERE ARE
05:23PM 23 DISTINCT ILLEGAL ENDS AND NO OVERLAPPING INTERESTS BETWEEN
05:23PM 24 THE PARTIES, THEY'RE SEPARATE CONSPIRACIES." WELL, THERE ARE
05:23PM 25 OVERLAPPING INTERESTS HERE.

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05:24PM 1 AND THEN MALDONADO-RIVERA, WHICH IS A SECOND CIRCUIT
05:24PM 2 CASE. THAT COURT OF APPEALS SAID, "A DEFENDANT MUST SHOW THERE
05:24PM 3 WAS EVIDENCE OF SEPARATE NETWORKS OPERATING INDEPENDENTLY OF
05:24PM 4 EACH OTHER." AND THAT WAS A REQUEST TO CHARGE THE JURY ON
05:24PM 5 MULTIPLE CONSPIRACIES. SO THE CASE IS ON POINT. THE PROBLEM
05:24PM 6 IS, IT'S THE SECOND CIRCUIT, NOT THE FIFTH CIRCUIT. BUT THEIR
05:25PM 7 STANDARD IS A REQUIREMENT THAT THE DEFENDANT SHOW EVIDENCE OF
05:25PM 8 SEPARATE NETWORKS OPERATING INDEPENDENTLY OF EACH OTHER. WE
05:25PM 9 DON'T HAVE THAT HERE, I DON'T THINK.

05:25PM 10 THE SECOND CIRCUIT ALSO SAYS, "THE COCONSPIRATORS
05:25PM 11 NEED NOT HAVE AGREED ON THE DETAILS SO LONG AS THEY AGREE
05:25PM 12 ON THE ESSENTIAL NATURE OF THE PLAN. THE GOALS OF ALL
05:25PM 13 PARTICIPANTS NEED NOT BE CONGRUENT SO LONG AS THEY ARE NOT
05:25PM 14 AT CROSS-PURPOSES. LAPSES IN TIME, CHANGES IN MEMBERSHIP,
05:25PM 15 SHIFTING EMPHASIS IN THE LOCALE OF OPERATIONS DOES NOT
05:25PM 16 NECESSARILY CONVERT A SINGLE CONSPIRACY INTO MULTIPLE
05:25PM 17 CONSPIRACIES. AND IT'S NOT NECESSARY THAT THE CONSPIRATORS
05:25PM 18 KNOW ALL THE IDENTITIES OF ALL THE OTHER CONSPIRATORS."

05:25PM 19 SO THOSE TWO OUT-OF-CIRCUIT CASES WOULD SEEM TO
05:26PM 20 SUPPORT THE GOVERNMENT.

05:26PM 21 MR. PETRAZIO: JUDGE--

05:26PM 22 THE COURT: I'VE NEVER HAD A REAL CLEAR PICTURE OF
05:26PM 23 WHEN YOU GIVE A MULTIPLE-CONSPIRACY INSTRUCTION AND WHEN YOU
05:26PM 24 DON'T.

05:26PM 25 MR. PETRAZIO: JUDGE, FROM MY PERSPECTIVE, I THINK

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05:26PM 1 AS I SAT HERE DURING THIS TRIAL AND THERE WAS ONE WITNESS THAT
05:26PM 2 TESTIFIED AGAINST MY CLIENT--IT WAS A COCONSPIRATOR--I THINK
05:26PM 3 THAT MIGHT BE A SITUATION THAT WOULD LEND ITSELF TO MULTIPLE
05:26PM 4 CONSPIRACIES. YOU HAVE ANDY NGUYEN TESTIFYING THAT HE ALWAYS
05:26PM 5 GOT IT DIRECTLY FROM PRIMO. THEIR DIAGRAM THEY PUT UP SHOWS
05:26PM 6 ANDY NGUYEN GETTING IT FROM CAZARES AND/OR MR. VEGA. BUT IF
05:27PM 7 YOU LOOK AT THE TIME THAT THEY HAVE TESTIFIED THAT THEY HAD
05:27PM 8 DRUGS, IT LOOKED LIKE MR. CAZARES HAD GONE OUT ON HIS OWN AND
05:27PM 9 NOW
05:27PM 10 WAS ATTEMPTING TO COOK METHAMPHETAMINE. THERE WAS NEVER ANY
05:27PM 11 TESTIMONY OF WHAT THEY WERE GONNA DO WITH THAT. SO, AS FAR
05:27PM 12 AS DISTRIBUTION, IT'S POSSIBLE THAT MR. CAZARES HAD DECIDED HE
05:27PM 13 WAS GONNA GO OUT ON HIS OWN. I DON'T KNOW. I MEAN, THAT MIGHT
05:27PM 14 LEND ITSELF TO AN ARGUMENT THAT MR. CAZARES HAD DECIDED THROUGH
05:27PM 15 HIS CONNECTION THAT HE HAD NEWLY MADE WITH PRIMO IN MEXICO THAT
05:27PM 16 HE WAS GONNA GO OUT ON HIS OWN. I DON'T KNOW THAT THEY TIED IT
05:27PM 17 IN UNDERNEATH THAT. THERE WASN'T EVIDENCE OF THAT.

05:27PM 18 THE COURT: THE ONLY EVIDENCE ON YOUR CLIENT COMES
05:27PM 19 FROM RAMIRO CAZARES.

05:28PM 20 MR. PETRAZIO: THERE'S TESTIMONY FROM MR. CAZARES
05:28PM 21 THAT AT TIMES WHEN HE DROPPED MONEY OR GAVE MONEY OR DROPPED
05:28PM 22 DRUGS IT WAS AT ONE POINT, IF YOU READ HIS TESTIMONY, TWO
05:28PM 23 SKINNY WHITE GUYS; AND THEN IT'S ASIAN GUYS; AND THEN ANOTHER
05:28PM 24 TIME TO WOMEN. BUT WE DON'T HAVE THE IDENTITY OF ANYONE, EVER,
05:28PM 25 IN ANY OF HIS DEALINGS.

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05:28PM 1 THE COURT: DID NGUYEN TESTIFY HE GOT HIS DRUGS FROM
05:28PM 2 YOUR CLIENT?

05:28PM 3 MR. PETRAZIO: I DON'T BELIEVE SO. I BELIEVE THAT
05:28PM 4 HIS TESTIMONY WAS EITHER HE GOT IT DIRECTLY FROM PRIMO OR COOL
05:28PM 5 GUY DIRECTLY.

05:28PM 6 THE COURT: IS THAT YOUR RECOLLECTION, MR. GONZALEZ
05:28PM 7 AND MS. BATSON?

05:28PM 8 MR. GONZALEZ: THAT HE--THAT WHO--THAT ANDY NGUYEN?

05:28PM 9 THE COURT: UH-HUH.

05:28PM 10 MR. GONZALEZ: HE IDENTIFIED THAT HE GOT THE DRUGS
05:28PM 11 FROM CAZARES.

05:28PM 12 THE COURT: SO WHAT'S THE CONNECTION WITH VEGA?
05:29PM 13 SIMPLY THAT CAZARES AND VEGA WORKED TOGETHER?

05:29PM 14 MR. GONZALEZ: AND VEGA INDICATED THAT HE WAS ALSO
05:29PM 15 PICKING UP CURRENCY DURING THE TIME.

05:29PM 16 THE COURT: DID HE PICK IT UP FROM ANDY NGUYEN?

05:29PM 17 MR. GONZALEZ: HE SAID HE PICKED IT UP FROM TWO
05:29PM 18 INDIVIDUALS AND DELIVERED THE MONEY TO TWO FEMALES. THAT'S
05:29PM 19 WHAT I REMEMBER.

05:29PM 20 THE COURT: WELL, THE ONLY THING I HAVE ON CARLOS
05:29PM 21 VEGA IS CAZARES KNOWS HIM, HE IDENTIFIED HIM. VEGA TOLD
05:29PM 22 CAZARES HE PICKED UP THE MONEY AND DELIVERED IT TO TWO WOMEN.
05:29PM 23 CAZARES CALLED JUAN VEGA, WHO DROVE A BLACK HONDA, TO MAKE
05:29PM 24 THE PICKUP OF DRUGS. CAZARES--OR VEGA IS PICKING UP MONEY,
05:29PM 25 GIVING IT TO TWO WOMEN, PICKING UP DRUGS--

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05:29PM 1 MR. GONZALEZ: AND COOKING DRUGS.

05:29PM 2 THE COURT: --AND COOKING DRUGS.

05:30PM 3 MR. GONZALEZ: AND THEN CAZARES WAS DELIVERING IT
05:30PM 4 TO ANDY NGUYEN.

05:30PM 5 THE COURT: AND VEGA SAID IN HIS STATEMENT TO AGENT
05:30PM 6 MATA THAT HE WAS A RUNNER FOR CAZARES.

05:30PM 7 MR. GONZALEZ: CORRECT, YOUR HONOR. AND THAT HE
05:30PM 8 KNEW THAT PRIMO WAS A SOURCE OF SUPPLY FOR CAZARES.

05:30PM 9 THE COURT: THEN CAZARES IS DELIVERING TO ANDY
05:30PM 10 NGUYEN. WHY WOULD I NOT GIVE A MULTIPLE-CONSPIRACY INSTRUCTION
05:30PM 11 REGARDING VEGA?

05:30PM 12 MR. GONZALEZ: BECAUSE, YOUR HONOR, THE CHAIN OF
05:30PM 13 DISTRIBUTION IS FROM PRIMO, CAZARES AND VEGA TO ANDY NGUYEN.
05:30PM 14 ANDY NGUYEN THEN DELIVERS IT TO MIKE CAMACHO, WHO THEN DELIVERS
05:30PM 15 IT TO RENE SALAZAR, WHO THEN DELIVERS IT TO ALL THE PERSONS IN
05:30PM 16 SHERMAN. SO THAT'S THE CHAIN OF DISTRIBUTION. THAT'S ONE
05:30PM 17 CONSPIRACY.

05:30PM 18 THE COURT: ALL RIGHT. BUT IT'S ERROR IF THE COURT
05:31PM 19 REFUSES A REQUEST TO INSTRUCT ON MULTIPLE CONSPIRACIES AND THE
05:31PM 20 THEORY HAS ANY EVIDENTIARY SUPPORT. COULD MR. PETRAZIO NOT
05:31PM 21 ARGUE THAT MR. VEGA HAD ONLY AN AGREEMENT WITH CAZARES?

05:31PM 22 MR. GONZALEZ: NO. BECAUSE THE RECORDING WHERE--
05:31PM 23 IT'S CLEAR IN THE RECORDING THAT HE KNOWS WHO--ONE, HE TOLD
05:31PM 24 AGENT MATA THAT HE KNEW PRIMO WAS A SOURCE OF SUPPLY.

05:31PM 25 THE COURT: OKAY.

1594

05:31PM 1 MR. GONZALEZ: SO HE HAS AN AGREEMENT WITH PRIMO,
05:31PM 2 ALSO, 'CAUSE THAT'S WHO THEY'RE WORKING FOR.

05:31PM 3 MR. PETRAZIO: I DON'T KNOW THAT YOU CAN MAKE THAT
05:31PM 4 JUMP.

05:31PM 5 MR. GONZALEZ: SO IT'S NOT ONLY WITH CAZARES, IT'S
05:31PM 6 ALSO WITH THE SOURCE OF SUPPLY IN MEXICO. 'CAUSE THAT'S WHO
05:31PM 7 THEY'RE WORKING FOR.

05:31PM 8 THE COURT: OKAY.

05:32PM 9 MR. GONZALEZ: PLUS, THERE'S ALSO THE TESTIMONY
05:32PM 10 THAT PRIMO TOLD THEM HOW TO COOK. HE TOLD THEM. 'CAUSE YOU
05:32PM 11 REMEMBER THE TESTIMONY OF CAZARES THAT HE SAID THAT HE PUT HIM
05:32PM 12 ON THE SPEAKERPHONE SO THAT HE, PRIMO, COULD TELL THEM, WHICH
05:32PM 13 IS VEGA AND CAZARES, HOW TO COOK THE METH. SO THEY'RE TAKING
05:32PM 14 THEIR DIRECTION FROM PRIMO. SO I DON'T SEE HOW HE COULD ARGUE
05:32PM 15 THAT IT'S SOMEBODY ELSE, YOU KNOW, THAT HE'S ONLY TAKING HIS
05:32PM 16 ORDERS FROM CAZARES AND THAT THAT'S A SEPARATE CONSPIRACY.

05:32PM 17 THE COURT: HE COULD ARGUE IT'S A CONSPIRACY WITH
05:32PM 18 CAZARES AND PRIMO AND THAT'S IT. I MEAN, JUST KNOWING THAT
05:32PM 19 SOMETHING COMES FROM SOMEONE DOESN'T MEAN YOU HAVE AN AGREEMENT
05:32PM 20 WITH THEM.

05:32PM 21 MR. GONZALEZ: BUT THEY'RE NOT ONLY DOING THAT,
05:32PM 22 THEY'RE TAKING DIRECTION FROM HIM AND THEY'RE DOING SOMETHING
05:32PM 23 FOR HIM. SO THERE'S AN AGREEMENT FOR THEM TO DO SOMETHING FOR
05:32PM 24 HIM.

05:32PM 25 THE COURT: OKAY.

1595

05:32PM 1 MR. GONZALEZ: AND THEN THAT DRUG THAT THEY'RE
05:32PM 2 PROCESSING IS THE DRUG THAT THEY'RE DISTRIBUTING. THAT DRUG
05:32PM 3 THAT THEY'RE DISTRIBUTING IS GOING TO ANDY NGUYEN. THAT DRUG
05:32PM 4 THAT ANDY NGUYEN IS RECEIVING IS GOING TO MICHAEL CAMACHO.
05:33PM 5 FROM MICHAEL CAMACHO, IT THEN GOES TO RENE SALAZAR, AND THEN IT
05:33PM 6 GOES TO ALL THE PEOPLE DOWN IN SHERMAN. SO THAT'S WHY IT'S ONE
05:33PM 7 SINGLE CONSPIRACY. AND THAT'S JUST KEEPING IT ON ONE SIDE OF
05:33PM 8 THE DISTRIBUTION.

05:33PM 9 WE CAN THEN GO TO THE OTHER SIDE OF THE DISTRIBUTION,
05:33PM 10 WHICH IS FERNANDO PERALES, AND IT'S THE SAME CONSPIRACY BECAUSE
05:33PM 11 THE GOAL IS ONCE AGAIN THE SAME: GET THE METHAMPHETAMINE TO
05:33PM 12 SHERMAN FOR DISTRIBUTION.

05:33PM 13 THE COURT: SO WHAT YOU ARE SAYING IS: THE
05:33PM 14 DEFENDANT HAS TO DEMONSTRATE TO THE COURT, IN ORDER TO BE
05:33PM 15 ENTITLED TO THE MULTIPLE-CONSPIRACY INSTRUCTION, THAT THERE IS
05:33PM 16 A CLEAR SEPARATION BETWEEN WHAT HE WAS DOING AND WHAT ALL THE
05:33PM 17 OTHERS WERE DOING?

05:33PM 18 MR. GONZALEZ: YES. BECAUSE THEY'RE INTERCONNECTED.
05:33PM 19 IT'S A CHAIN OF DISTRIBUTION. THE BOTTOM PART OF THE CHAIN
05:33PM 20 DOESN'T HAPPEN IF THE TOP PART OF THE CHAIN DOESN'T OCCUR. AND
05:33PM 21 THAT'S WHAT'S HAPPENING HERE. IF IT'S BEING IMPORTED AND IT'S
05:33PM 22 BEING MANUFACTURED HERE WHERE THEY'RE CONVERTING IT AND COOKING
05:33PM 23 IT, IT DOESN'T GET TO SHERMAN IF THEY DON'T DO THEIR PART IN
05:34PM 24 IT. AND THEY DON'T HAVE TO KNOW EVERYBODY IN SHERMAN--

05:34PM 25 THE COURT: OH, I KNOW.

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05:34PM 1 MR. GONZALEZ: --THEY JUST HAVE TO KNOW ANDY NGUYEN,
05:34PM 2 WHICH THEY DO, BECAUSE THAT'S WHO'S GETTING IT AND THAT'S WHO'S
05:34PM 3 DISTRIBUTING IT AND FACILITATING THAT PART OF IT. AND THEN
05:34PM 4 WHEN MICHAEL CAMACHO TAKES IT TO RENE SALAZAR, HE'S THE ONE
05:34PM 5 THAT HAS THE DISTRIBUTION IN SHERMAN.

05:34PM 6 THE COURT: WELL, YOUR POSITION IS WHAT THE SECOND
05:34PM 7 CIRCUIT SAYS, WHICH IS THAT A DEFENDANT MUST SHOW THAT THERE
05:34PM 8 WAS EVIDENCE OF SEPARATE NETWORKS OPERATING INDEPENDENTLY
05:34PM 9 OF EACH OTHER. I MEAN, AT LEAST THAT'S A CLEAR TEST.

05:34PM 10 MR. WHALEN: THE ONLY THING I WOULD ADD TO THAT
05:34PM 11 IS THAT I THINK IF YOU LOOK AT THE TESTIMONY OF CAZARES, HE
05:34PM 12 STARTED--HE SAYS HE GOT THIS PHONE CALL IN JANUARY OF 2012.
05:34PM 13 HE GETS THIS CALL AND HE STARTS WORKING IN 2012. I THINK
05:34PM 14 ALSO THAT THE TESTIMONY IS THAT MR. SALAZAR AND MR. HOUSE ARE
05:35PM 15 INCARCERATED AND THEY'RE OUT IN AUGUST OF 2011. THEY'RE IN
05:35PM 16 CUSTODY.

05:35PM 17 THE COURT: OKAY.

05:35PM 18 MR. WHALEN: SO THE ARGUMENT THAT THEN IT'S GOING
05:35PM 19 TO ANDY NGUYEN, THEN GOING TO CAMACHO, THEN GOING TO SALAZAR,
05:35PM 20 THAT'S NOT ACCURATE, BECAUSE THEN SALAZAR AND HOUSE ARE
05:35PM 21 INCARCERATED AND NOT CONTINUING TO ACCEPT PRODUCT FROM
05:35PM 22 MR. CAMACHO BECAUSE--

05:35PM 23 MR. GONZALEZ: YOUR HONOR, THAT ARGUMENT ALSO--
05:35PM 24 DEFENSE COUNSEL MADE THAT ARGUMENT EARLIER. JUST BECAUSE
05:35PM 25 PEOPLE LEAVE A CONSPIRACY DOESN'T MEAN THE CONSPIRACY ENDS.

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05:35PM 1 THERE'S PEOPLE WHO GET ARRESTED AND DON'T WITHDRAW FROM
05:35PM 2 THE CONSPIRACY AND COME RIGHT BACK INTO THE CONSPIRACY. SO
05:35PM 3 THAT DOESN'T NECESSARILY MEAN THERE'S ONE CONSPIRACY AND THEN
05:35PM 4 ANOTHER CONSPIRACY. I UNDERSTAND THAT'S WHAT MR. WHALEN IS
05:35PM 5 SAYING.

05:35PM 6 THE COURT: THAT'S WHAT'S CONFUSING ABOUT THIS,
05:35PM 7 THOUGH. I MEAN, YOU KNOW, IF YOU SHOW--THAT OUT-OF-CIRCUIT
05:36PM 8 CASE--LET'S SEE. I'VE GOT TO GET BACK TO IT--IF YOU SHOW
05:36PM 9 SEPARATE NETWORKS OPERATING INDEPENDENTLY OF EACH OTHER,
05:36PM 10 THEN YOU ARE DEFINITELY ENTITLED TO THE INSTRUCTION.

05:36PM 11 YOU KNOW, MR. WHALEN, IT DOES LOOK LIKE ONE NETWORK
05:36PM 12 HERE. I MEAN, THERE IS AN INTERRELATIONSHIP AMONG ALL OF THESE
05:36PM 13 PEOPLE, INCLUDING YOUR CLIENT AND EVEN INCLUDING MR. PETRAZIO'S
05:36PM 14 CLIENT. AND WHILE THERE WERE ONLY TWO WITNESSES TESTIFYING
05:36PM 15 AGAINST JUAN CARLOS VEGA, THE JURY CAN CERTAINLY BELIEVE THEM.
05:36PM 16 AND IF THE JURY BELIEVES THEM, THEY COULD FIND HIM GUILTY.

05:36PM 17 MR. PETRAZIO: UNDERSTOOD, YOUR HONOR. BUT I ALSO
05:36PM 18 BELIEVE THAT MR. CAZARES IS THE ONE WITH THE AGREEMENT WITH
05:36PM 19 PRIMO. OBVIOUSLY, I'M GOING TO ARGUE--

05:36PM 20 THE COURT: BUT VEGA IS WORKING WITH CAZARES AND
05:37PM 21 HE'S AWARE OF PRIMO.

05:37PM 22 MR. PETRAZIO: HE IS AN EMPLOYEE FOR SIX YEARS ALSO.
05:37PM 23 SO TO SAY THAT, YOU KNOW, THREE DAYS BEFORE THEY SHUT THIS
05:37PM 24 THING DOWN AND THEY ARREST MY GUY BASED ON MR. CAZARES'S
05:37PM 25 TESTIMONY AFTER HE'S IN CUSTODY, AND THAT'S ALL THE EVIDENCE

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05:37PM 1 THAT THEY GATHER, COMES FROM MR. CAZARES, I'M GONNA MAKE THE
05:37PM 2 ARGUMENT THAT, YOU KNOW, HE CAME IN AT THE LAST MOMENT ON THIS
05:37PM 3 CASE. AND TO SAY THAT HE HAD AN AGREEMENT WITH PRIMO, WHO IS
05:37PM 4 TO SAY PRIMO DIDN'T HAVE FOUR OTHER PEOPLE IN THE DALLAS
05:37PM 5 METROPLEX THAT HE HAS HIS OWN CONSPIRACIES WITH? IF HE'S A
05:37PM 6 MAIN SOURCE OF SUPPLY FROM MEXICO, I SUSPECT THAT'S THE CASE.

05:37PM 7 THE COURT: PRIMO MAY HAVE BEEN INVOLVED IN OTHER
05:37PM 8 CONSPIRACIES, YEAH.

05:37PM 9 MR. PETRAZIO: RIGHT. AND MY POINT IS, FROM
05:37PM 10 MR. VEGA'S PERSPECTIVE, HE DOESN'T KNOW WHAT HAPPENS AFTER
05:37PM 11 HE GETS IT. AND IT'S NEVER BEEN TIED IN THAT MR. VEGA EVER
05:37PM 12 GAVE TO ANYONE IN THIS CONSPIRACY. THAT HASN'T BEEN TIED IN.
05:38PM 13 THERE'S NO EVIDENCE OF THAT. AND MY POINT IS, I GUESS, ALL
05:38PM 14 OF A SUDDEN, ON APRIL 8TH OR 9TH, WHENEVER THEY GET ARRESTED
05:38PM 15 WITH ALL THESE DRUGS THAT ALL OF A SUDDEN THEY'RE GONNA START
05:38PM 16 COOKING, ISN'T THAT SOMETHING THAT THE PEOPLE BELOW THEM IN
05:38PM 17 THIS CONSPIRACY WERE DOING? IT SEEMS THAT I COULD MAKE THE
05:38PM 18 ARGUMENT THAT IF MR. CAZARES DECIDED--AND THE GOVERNMENT HAS
05:38PM 19 SAID HE DID--TO START COOKING, THAT THEY WERE STARTING THEIR
05:38PM 20 OWN DEAL IN DISTRIBUTING.

05:38PM 21 THE COURT: MR. GONZALEZ, WHAT DID YOU SAY THE
05:38PM 22 EVIDENCE IS THAT CAZARES AND VEGA WERE DISTRIBUTING TO NGUYEN?
05:38PM 23 DID YOU HAVE ANY EVIDENCE?

05:38PM 24 MR. GONZALEZ: CAZARES TESTIFIED THAT HE WAS
05:38PM 25 DISTRIBUTING TO ONE OF THE RUNNERS. HE IDENTIFIED ONE OF THE

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05:38PM 1 RUNNERS, WHICH WAS HOA MINH HOANG. IF YOU RECALL, HE SAID HE
05:38PM 2 DELIVERED FOUR KILOGRAMS TO HOA MINH HOANG. AND THEN HOA MINH
05:39PM 3 HOANG DELIVERED IT. AND THEN HE DELIVERED SOME MORE TO THEM.

05:39PM 4 THE COURT: OKAY.

05:39PM 5 MR. GONZALEZ: PLUS, THERE'S ALSO THE CONNECTION OF
05:39PM 6 THE VEHICLE. IF YOU RECALL, PRIMO WANTED A VEHICLE, AND ANDY
05:39PM 7 NGUYEN DELIVERED A VEHICLE TO MR. CAZARES. SO THAT'S THE
05:39PM 8 CONNECTION BETWEEN THEM.

05:39PM 9 MR. PETRAZIO: JUDGE, THERE'S STILL NO EVIDENCE AS
05:39PM 10 TO WHEN MR. VEGA PURPORTEDLY JOINED THIS CONSPIRACY. THERE IS
05:39PM 11 TESTIMONY THAT THERE WERE FIVE, SIX, SEVEN TRANSACTIONS THAT
05:39PM 12 MR. CAZARES DID FOR PRIMO PRIOR TO--THERE'S NO TESTIMONY FROM
05:39PM 13 CAZARES SAYING AT WHAT POINT HE TOLD MR. VEGA ABOUT WHAT HE
05:39PM 14 WAS DOING. SO TO ARGUE THAT THESE THINGS HAPPENED AND INVOLVED
05:39PM 15 MR. VEGA WHEN WE DON'T HAVE A TIME PERIOD WHEN THAT COMES IN--

05:39PM 16 MR. GONZALEZ: WE HAVE A TIME PERIOD THAT WAS
05:39PM 17 TESTIFIED BY MR. CAZARES AS TO HIS INVOLVEMENT.

05:39PM 18 MR. PETRAZIO: I DON'T SEE IT IN THE TESTIMONY.

05:39PM 19 THE COURT: VEGA WAS AWARE OF PRIMO, ACCORDING TO
05:39PM 20 THE EVIDENCE. SOME EVIDENCE. VEGA'S RELATIONSHIP COULD HAVE
05:40PM 21 BEEN STRICTLY WITH CAZARES AND DOING WHAT CAZARES TELLS HIM TO
05:40PM 22 DO. AND HE'S STILL A CONSPIRATOR--

05:40PM 23 MR. PETRAZIO: I UNDERSTAND.

05:40PM 24 THE COURT: --IN THE OVERALL CONSPIRACY. THERE'S A
05:40PM 25 COMMON GOAL OF DISTRIBUTING METHAMPHETAMINE FOR PROFIT AMONG

1600

05:40PM 1 ALL THESE PEOPLE. OR JUST FOR USE.

05:40PM 2 INTERDEPENDENCE? WELL, THEY'RE GETTING THE
05:40PM 3 METHAMPHETAMINE FROM--ACCORDING TO SOME OF THE EVIDENCE FROM
05:40PM 4 CAZARES AND VEGA AND NGUYEN AND PERALES, SALAZAR AND HOUSE,
05:40PM 5 DISTRIBUTORS INCLUDING HOA HOANG, MANUEL CAMACHO, PRISCILLA
05:40PM 6 MARCELENO CAMACHO, BOBBY JAMES. AND TIMOTHY BOWEN IS BUYING,
05:41PM 7 CHARLIE QUIROLO IS DISTRIBUTING. THE DEGREE OF INTERDEPENDENCE
05:41PM 8 OF THE ACTIONS OF MEMBERS--I THINK THERE'S INTERDEPENDENCE.

05:41PM 9 REQUIRED NEXUS. ARE THEY PARTICIPATING WITH CORE
05:41PM 10 CONSPIRATORS? THEY ALL HAVE TO BE PARTICIPATING WITH EITHER
05:41PM 11 NGUYEN OR PERALES OR HOUSE OR SALAZAR OR VEGA, SOMEBODY WHO IS
05:41PM 12 SUPPLYING DRUGS.

05:42PM 13 THE ONLY THING THAT BOTHERS ME IS THE LANGUAGE IN
05:42PM 14 SOME OF THESE CASES THAT SAYS--FOR EXAMPLE, IN THE ERWIN CASE,
05:42PM 15 WHICH IS A FIFTH CIRCUIT CASE, YOU GIVE THE INSTRUCTION IF
05:42PM 16 THERE'S ANY EVIDENCE TO SUPPORT IT WHATSOEVER. OF COURSE, IT
05:42PM 17 TAKES EVIDENCE TO SUPPORT IT. THAT'S WHERE YOU LOOK AT ISSUES
05:42PM 18 LIKE THE THREE-FACTOR TEST, WHICH I'VE JUST GONE THROUGH, AND
05:43PM 19 THE FIVE-FACTOR TEST.

05:43PM 20 TIME FRAMES DIFFERED. SOME OF THESE PEOPLE WERE
05:43PM 21 ARRESTED AT DIFFERENT TIMES AND TAKEN OUT OF THE PICTURE.

05:43PM 22 LOCATION WAS PRETTY MUCH THE SAME, THE DALLAS-FORT
05:43PM 23 WORTH AREA AND THE SHERMAN-DENISON AREA.

05:43PM 24 OKAY. MR. WHALEN, I DON'T KNOW WHETHER TO THINK
05:43PM 25 ABOUT IT OVERNIGHT OR TO GIVE YOU A RULING RIGHT NOW. I MEAN,

1601

05:43PM 1 YOUR GUY, TIM BOWEN, IS GETTING DRUGS FROM A LOT OF THESE OTHER
05:44PM 2 CONSPIRATORS. I DON'T KNOW HOW YOU COULD ARGUE HE'S A MEMBER
05:44PM 3 OF SOME SEPARATE CONSPIRACY.

05:44PM 4 SALAZAR DEFINITELY IS INVOLVED WITH MANY OF THESE
05:44PM 5 PEOPLE. MOST OF THE PEOPLE WHO GOT ON THE WITNESS STAND
05:44PM 6 TESTIFIED AND IDENTIFIED MR. SALAZAR AND TESTIFIED ABOUT
05:44PM 7 HIS INVOLVEMENT WITH THEM.

05:44PM 8 JUAN CARLOS VEGA. CERTAINLY THE FEWEST WITNESSES
05:44PM 9 TESTIFIED ABOUT VEGA. BUT IF THE JURY BELIEVES IT, BELIEVES
05:44PM 10 THOSE TWO WITNESSES, AGENT MATA AND CAZARES--

05:44PM 11 MR. PETRAZIO: JUDGE, ALSO, AN ARGUMENT COULD BE
05:44PM 12 MADE THAT THE FIRST FIVE OR SIX TRANSACTIONS THAT CAZARES DID
05:44PM 13 FOR PRIMO DID RELATE TO THIS CASE. AND THEN, ONCE HE HAD DONE
05:44PM 14 THAT, HE WAS FREE TO DO WHATEVER HE WANTED TO DO. YOU COULD
05:45PM 15 MAKE AN ARGUMENT HE WITHDREW FROM THAT AND NOW DECIDED TO GO
05:45PM 16 OUT ON HIS OWN DEAL.

05:45PM 17 THE COURT: YOU COULD MAKE THAT ARGUMENT.

05:45PM 18 MR. GONZALEZ: YOUR HONOR, AND THE TIME FRAME--
05:45PM 19 JUST FOR THE RECORD, THE TIME FRAME, CAZARES SAID HE STARTED
05:45PM 20 IN JANUARY 2012. ANDY NGUYEN WAS NOT ARRESTED UNTIL MARCH
05:45PM 21 OF 2012. SO HE WAS STILL IN THE CONSPIRACY DURING THAT TIME
05:45PM 22 PERIOD, THOSE MONTHS IN 2012.

05:45PM 23 THE COURT: OF COURSE, THE CAR THAT VEGA IS DRIVING,
05:45PM 24 THE HONDA, SHOWS THE OWNER AS ANDY NGUYEN'S SISTER.

05:45PM 25 MR. PETRAZIO: VEGA DOESN'T KNOW THAT.

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05:45PM 1 THE COURT: WAIT A MINUTE. THESE ARE DOCUMENTS THAT
05:46PM 2 ARE IN THE CAR.

05:46PM 3 MR. PETRAZIO: I UNDERSTAND. BUT THAT'S ASSUMING
05:46PM 4 THAT VEGA EVER READ WHAT WAS IN THE GLOVE BOX. HE KNOWS HIS
05:46PM 5 BOSS GAVE HIM A CAR TO DRIVE.

05:46PM 6 THE COURT: I DON'T KNOW THAT VEGA HAS TO KNOW
05:46PM 7 NGUYEN PERSONALLY. BUT THERE'S DEFINITELY A RELATIONSHIP
05:46PM 8 BETWEEN CAZARES AND NGUYEN, ACCORDING TO THE EVIDENCE. AND
05:46PM 9 THEN YOU'VE GOT VEGA TAKING ORDERS FROM CAZARES. BASICALLY,
05:46PM 10 VEGA WAS TAKING ORDERS FROM CAZARES.

05:46PM 11 DO YOU AGREE, MR. GONZALEZ?

05:46PM 12 MR. GONZALEZ: YES, I DO.

05:46PM 13 THE COURT: YOU JUST DON'T THINK THERE'S ANY
05:46PM 14 EVIDENCE THAT VEGA AND CAZARES ARE OUT THERE DOING THEIR OWN
05:46PM 15 THING?

05:46PM 16 MR. GONZALEZ: I DO NOT.

05:46PM 17 THE COURT: YOU THINK THEY'RE CONNECTED WITH THE
05:46PM 18 OTHER PEOPLE HERE?

05:46PM 19 MR. GONZALEZ: I THINK THEY'RE WORKING FOR PRIMO AND
05:46PM 20 THEY BOTH KNOW IT.

05:46PM 21 THE COURT: YEAH. AND I THINK YOU SAID EARLIER THAT
05:46PM 22 THERE'S EVIDENCE THAT NGUYEN GOT DRUGS FROM CAZARES.

05:46PM 23 MR. GONZALEZ: YES. THROUGH THE--WE GOT THAT
05:46PM 24 EVIDENCE THROUGH HIS DRIVER AND CAZARES.

05:47PM 25 THE COURT: AND BECAUSE CAZARES DELIVERED METH TO

1603

05:47PM 1 HOA HOANG, WHO IS NGUYEN'S COUSIN, AND THEY WERE WORKING FOR
05:47PM 2 EACH OTHER--OR HOA HOANG WAS WORKING FOR NGUYEN.

05:47PM 3 MR. GONZALEZ: BOTH DRUGS AND MONEY.

05:47PM 4 THE COURT: I THINK THE EVIDENCE HERE IS ABOUT ONE
05:47PM 5 CONSPIRACY. I'M GOING TO DENY YOUR REQUEST FOR A MULTIPLE-
05:47PM 6 CONSPIRACY CHARGE. I DON'T THINK THE EVIDENCE RAISES IT.
05:47PM 7 THERE'S TOO MUCH INTERDEPENDENCE AMONG ALL OF THESE ALLEGED
05:47PM 8 COCONSPIRATORS.

05:47PM 9 SO I WILL MAKE THE CHANGE THAT MR. GONZALEZ SUGGESTS
05:47PM 10 ON THE VERDICT FORM. AND I CAN DO THAT TONIGHT WHILE YOU WAIT.
05:47PM 11 OR I CAN HAVE THESE FOR YOU IN THE MORNING.

05:47PM 12 MR. PETRAZIO: IN THE MORNING, YOUR HONOR.

05:47PM 13 THE COURT: OKAY.

05:47PM 14 HOW MUCH TIME DO Y'ALL WANT TO ARGUE? DO YOU HAVE
05:48PM 15 ANY IDEA? OR DO YOU WANT TO THINK ABOUT IT AND LET ME KNOW IN
05:48PM 16 THE MORNING? I DON'T CARE. YOU CAN TELL ME TOMORROW MORNING.

05:48PM 17 MR. WHALEN: I'LL LET YOU KNOW IN THE MORNING.

05:48PM 18 THE COURT: OKAY. ALL RIGHT. I'LL SEE Y'ALL
05:48PM 19 TOMORROW AT 9:00. THANK YOU.

05:48PM 20 [OVERNIGHT RECESS]

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COURT REPORTER'S CERTIFICATE

I CERTIFY THAT PAGES 1485 THROUGH 1626 CONTAIN A CORRECT
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

MAY 1, 2014.



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